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A LOCAL STUDY OF THE RACE PROBLEM

RACE RELATIONS IN THE EASTERN PIEDMONT REGION OF GEORGIA.

THE northern limit of the ante-bellum cotton belt in Georgia was the tier of counties extending from Elbert on the Savannah River in a southwesterly direction between Walton and Morgan counties to Monroe county and thence westward to Troup county on the Alabama line. North of that line, some cotton was produced, but its culture was not the dominant agricultural interest. This fact determined the character of the population north and south of the line, as is indicated by the figures on the accompanying map (see next page). In the several counties here investigated are given the percentages of the blacks in the total population in 1860 and in 1900. The upper figures are for 1860, the lower for 1900.

The present study is confined to the counties of the eastern piedmont region. The piedmont or metamorphic section of Georgia embraces all that part of the state between the mountainous section (confined to the two most northern tiers of counties) and the fall line, which runs across the state from Richmond county, on the Savannah, through Baldwin, Bibb and Muscogee counties. The soil of all this section of the state is similar in character, consisting of red and sandy lands, with a firm subsoil of red clay. The Census of 1880[1] contains an accurate description of the soil, with particulars as to each county, and an excellent soil map by Loughridge.

[1] Vol. vi, pp. 277 *et seq.*

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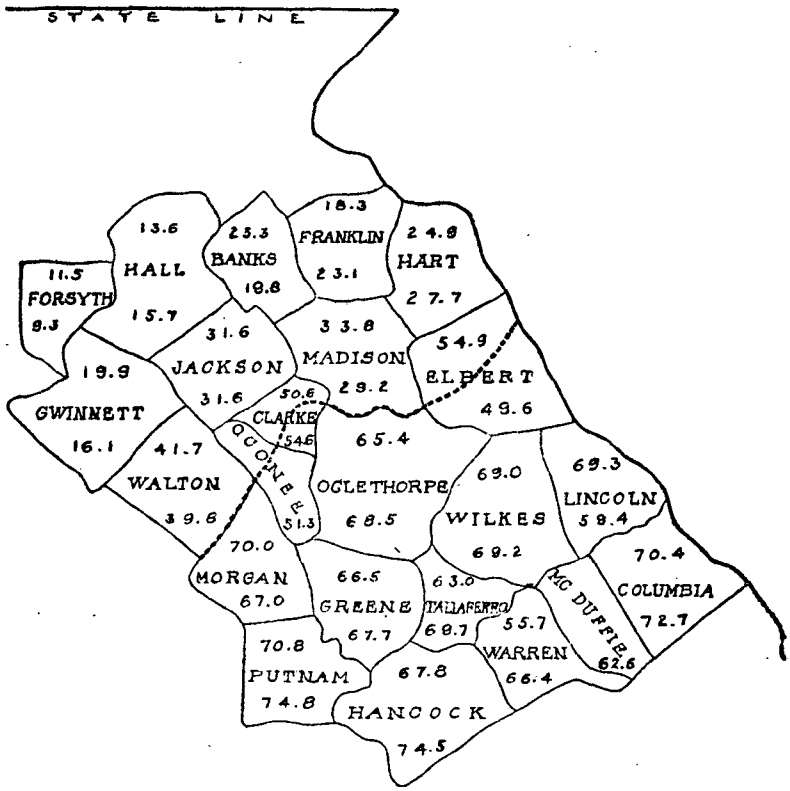

The counties under investigation fall into two distinct categories. The southern group includes Columbia, Warren, Hancock, Putnam, Morgan, Greene, Taliaferro, Oglethorpe, Wilkes and Lincoln. McDuffie county was so recently laid out from its neighbors (1871) that it has no separate history. The northern group embraces Hart, Franklin, Banks, Hall, Forsyth, Gwinnett, Jackson, Madison and Walton. The line of demarcation between the two groups is drawn according to the numerical preponderance of negroes, both in ante-bellum times and at the present day, in the southern group, and the numerical inferiority of negroes in both periods in the northern group. For convenience the two groups will be referred to as the white counties and the black counties. The distinction is brought out in Tables I and II.

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TABLE I

GROUP OF CONTIGUOUS COUNTIES IN THE BLACK BELT, SHOWING THE DECLINE OF THE WHITE ELEMENT AND THE INCREASE OF THE BLACKS

	COLUMBIA		WARREN		HANCOCK		PUTNAM[1]		MORGAN	
YEAR	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK
1800 ..	5321	3024	6252	2077	9605	4851	.....	.....	.....	.....
1810 ..	5229	6013	5659	3066	6849	6481	6771	3258	5949	2420
1820 ..	5213	7482	6530	4100	5847	6887	8208	7267	7463	6057
1830 ..	4467	8139	6152	4794	4603	7217	5513	7748	5211	6835
1840 ..	3920	7436	5176	4613	3697	5962	3741	6519	3461	5660
1850 ..	3617	8344	6158	6267	4210	7368	3300	7494	3634	7110
1860 ..	3511	8349	4347	5473	3871	8173	2956	7169	2983	7013
1870 ..	4080	9449	4285	6260	3645	7672	3016	7445	3637	7058
1880 ..	3030[3]	7435	4039	6846	5044	11943	3518	11021	4249	9782
1890 ..	3243	8038	4201	6756	4739	12410	3939	10903	5043	10997
1900 ..	2900	7753	3842	7621	4649	13628	3379	10057	5207	10606

	GREENE		TALIAFERRO[2]		OGLETHORPE		WILKES		LINCOLN	
YEAR	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK
1800 ..	7097	3664	.....	.....	6686	3094	8032	5071	3326	1440
1810 ..	6398	5281	.....	.....	6857	5440	7602	7285	2331	2224
1820 ..	6599	6990	.....	.....	6703	7343	7838	9768	3378	3080
1830 ..	5026	7523	2162	2772	5659	7959	5265	8972	2824	3321
1840 ..	4641	7049	2295	2895	4506	6362	3630	6518	2527	3368
1850 ..	4744	8324	2051	3095	4382	7877	3805	8302	2187	3811
1860 ..	4229	8423	1693	2890	4014	7535	3434	7986	1675	3791
1870 ..	4298	8156	1809	2987	4641	7141	3969	7827	1797	3616
1880 ..	5573	11974	2312	4722	5469	9931	5173	10812	2254	4158
1890 ..	5332	11719	2464	4827	5686	11264	5616	12464	2473	3673
1900 ..	5325	11217	2391	5521	5638	12243	6423	14442	2883	4273

The counties listed in Table I are typical of the cotton belt, with its large plantations, numerous slaves and exploitative soil culture; while those of the second table are representative of those districts of the South which did not attract the large planter, and in which cultivation was and is relatively intensive and diversification of crops the rule.

[1] Laid out in 1807.

[2] Laid out in 1825.

[3] Part of decrease caused by portion of the county being laid off, in 1871, to make the new county of McDuffie.

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TABLE II

GROUP OF CONTIGUOUS COUNTIES NORTH OF THE BLACK BELT, SHOWING THE INCREASING PREDOMINANCE OF WHITES SINCE 1860

	HART [1]		FRANKLIN		BANKS [2]		HALL [3]		FORSYTH [4]	
YEAR	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK
1800 ..	.....	.....	5892	967	.....	.....	.....	.....	.....	.....
1810 .	.....	.....	9143	1672	.....	.....	.....	.....	.....	.....
1820 ..	.....	.....	7240	1800	.....	.....	4681	405	.....	.....
1830 ..	.....	.....	7694	2413	.....	.....	10563	1185	.....	.....
1840 ..	.....	.....	7754	2132	.....	.....	6773	1102	5060	559
1850 ..	.....	.....	9076	2437	.....	.....	7370	1343	7812	1038
1860 ..	4603	1534	6038	1355	3610	1097	8091	1275	6851	898
1870 ..	4841	1942	6034	1859	4052	921	8317	1290	6862	1121
1880 ..	6212	2882	8906	2547	5830	1507	13040	2258	9072	1487
1890 ..	7930	2957	11372	3298	6999	1563	15280	2767	9866	1288
1900 ..	10467	4025	13496	4204	8448	2097	17480	3272	10467	1083

	GWINNETT [3]		JACKSON		MADISON [5]		WALTON [3]	
YEAR	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK
1800 ..	.....	.....	6328	1408	.....	.....	.....	... ..
1810 ..	.....	.....	8742	1827	.....	.....	964	62
1820 ..	4050	539	6346	2009	2829	906	3556	636
1830 ..	10949	2340	6180	2824	3385	1261	7762	3167
1840 ..	8552	2252	5994	2528	3125	1385	6583	3626
1850 ..	8952	2305	6808	2960	3763	1940	6895	3926
1860 ..	10358	2582	7249	3356	3924	2009	6447	4627
1870 ..	10272	2159	7471	3710	3646	1581	6876	4162
1880 ..	16016	3515	11139	5157	5392	2586	9321	6301
1890 ..	16903	2996	13780	5396	7391	3662	10312	7155
1900 ..	21442	4143	16433	7606	9339	3885	12601	8341

The three counties not included in either group, namely, Elbert, Clarke and Oconee, lie on the borderland of the black belt, and represent a shading-off of the characteristic population features of the two groups. In these three counties the white and black elements of the population are about equal, as is shown in Table III.

It is the purpose of this paper to sketch the economic his-

[1] Laid out in 1853. [2] Laid out in 1858. [3] Laid out in 1818.
[4] Laid out in 1832. [5] Laid out in 1811.

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TABLE III

COUNTIES LYING ON THE BORDER OF THE BLACK BELT

	ELBERT		CLARKE [1]		OCONEE [2]	
YEAR	WHITE	BLACK	WHITE	BLACK	WHITE	BLACK
1800 ..	7255	2839	.....	.....	.....	.....
1810 ..	7532	4624	5000	2628	.....	.....
1820 ..	6629	5159	5285	3482	.....	.....
1830 ..	6501	5853	5438	4738	.....	.....
1840 ..	6077	5048	5603	4919	.....	.....
1850 ..	6676	6283	5513	5606	.....	.....
1860 ..	4697	5736	5539	5679	.....	.....
1870 ..	4386	4863	6488	6453	.....	.....
1880 ..	6085	6872	5313	6388	3327	3024
1890 ..	7492	7884	7072	8111	3881	3832
1900 ..	9936	9793	8230	9478	4189	4413

tory of the two groups of counties and to present certain observations with reference to the present condition of the blacks.

History of the black counties

The land that is now cut up into Wilkes, Lincoln, Elbert, Oglethorpe and other counties was settled, in the latter part of the eighteenth century, by some of those Virginians and Carolinians who were pressing southward and westward in search of new lands.[3] Tobacco raising was the principal industry of these people, and the soil of the older commonwealths was becoming impoverished. Wilkes county[4] was the name given to the land occupied by the immigrants; and so rapid was the movement of population that when the first census was taken it revealed the fact that, of the 82,000 Georgians, 36,000 lived in Wilkes alone. The Carolinians who came to Georgia at that time were, as a rule, backwoods, frontier people; but the

[1] Laid out from Jackson County in 1801. Part added to Oglethorpe in 1813.

[2] Laid out from Clarke County in 1875.

[3] U. B. Phillips, Georgia and State Rights, pp. 87–89.

[4] See map in Twelfth Census, "Century of Population Growth," p. 69, showing changes in county lines. This map is inaccurate: Columbia county should not have been included in Wilkes, nor was Elbert ever a part of Franklin, having been cut off from Wilkes in 1790.

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Virginians, who constituted the larger number and included the more important element—the men who were in the main responsible for the development of this section of the state—were not of the pioneer class. They fully measured up to the current standards of culture. They transplanted to Georgia soil the Virginian civilization, bringing slaves, stock, cattle, household goods and books. One of the ante-bellum governors[1] of Georgia has left an interesting account of the Virginian families, closely related by numerous intermarriages, who settled in the Goosepond district, now in Oglethorpe county, on Broad River. They raised tobacco as a money crop, but diversification of farming was the rule. Practically everything used was produced on the farms. Though slave owners, the immigrants were not large planters—their servants were few in number and their estates were not extensive.

The invention of the cotton gin revolutionized this simple economic régime. Cotton culture on a large scale superseded the diversified farming and tobacco raising of the early days. Those who had the means enlarged their holdings into many-acred farms; the people of lesser economic efficiency were bought out and retired to less desired lands; slaves increased enormously in number and in price. In a remarkably short time what is ordinarily known as the ante-bellum system was established in the section. This development is shown by the figures of Table I, in connection with which the following table of slave prices should be considered.

TABLE IV

AVERAGE PRICE OF PRIME FIELD HANDS IN GEORGIA[2]

1800	$450.00	1821	$700.00	(Panic of 1819)
1810	600.00	1826	800.00	
1818	1,000.00			

From 1800 to 1820 the number of slaves doubled, while the white population remained practically stationary. By 1820 the blacks outnumbered the whites, and they have ever since

[1] Geo. R. Gilmer, Georgians, *passim*.

[2] U. B. Phillips, "Economic Cost of Slaveholding," POLITICAL SCIENCE QUARTERLY, vol. xx, p. 267.

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maintained the lead. This development is typical of the economic history of the cotton-planting districts. It was the universal belief that cotton could be most profitably produced on a large scale, by slaves in gangs. Farming being extensive and exploitative, there was an ever-increasing demand for lands and slaves. These two essential factors of production the poor man could not command. Conditions were against the small farmers, and the plantations tended to absorb their holdings. Not all of this class were dispossessed: there were always small farmers: but they were usually not prosperous and formed an unimportant and neglected element of the population.

At each census year after 1820 the white population in the black-belt counties showed a decline. Part of the loss was due to the departure of the small farmer in search of cheap lands, part to the movement of planters to fresher fields. Commercial fertilizers were unknown; and it was cheaper to move on to new land than to spend time and money in the effort to conserve the soil. The number of slaves fluctuated after 1820, in response to market conditions, but tended to remain stationary. The natural increase probably equaled the loss occasioned by the westward drift of planters. The noticeable break in 1840 was due to the crisis of 1839. For several years thereafter the planters made little demand for slaves. With flush times in 1848–1850, the domestic slave trade again became active. The acreage per planter and the average holding of slaves steadily increased from 1820 to 1860, as the plantation régime tightened its grip on the black belt.

History of the white counties

In the counties of the northern group there was little of the extensive cotton planting which had become characteristic of the black belt. The land in that part of Georgia was not in demand, as it was believed to be infertile. A trustworthy authority,[1] writing in 1849, said of Jackson (which is now considered a good county), that "much of the soil is unproduc-

[1] White, Statistics of Georgia, p. 499.

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tive." This statement was repeated verbatim as late as 1901.[1] Most of the counties in this northern group were once a part of Franklin county.[2] This huge tract of land was acquired from the Cherokees and Creeks in 1783. The legislature threw open the land for settlement,[3] giving land practically free to all actual settlers. The country filled fairly rapidly, with an excellent class of immigrants of Scotch-Irish descent. They came principally from South Carolina, and were a people noted for "thrift, plainness and independence."[4] The newcomers were of the small farmer class and did not develop into wholesale cotton planters, as did their southern neighbors. Slaves were never numerous in this region, as is shown in Table II. Accustomed to work with their hands, these immigrants settled down to careful, relatively intensive cultivation of the soil, and their land did not become exhausted. Lying outside of the zone of lands sought for by the planter, these counties received the overflow of the non-slaveholding class from the cotton-belt counties of Oglethorpe, Wilkes and Lincoln. Some slaveholders also moved in, but they were of comparative unimportance amid the far more numerous small farmers.

It is clear, accordingly, that in ante-bellum days sharply contrasted systems of economic and social life obtained in these two groups of counties. The southern group was occupied by great planters, who lived in colonial homes, cultivated broad estates with numerous slaves, sent their sons to college and concerned themselves with state and national politics. The slaves, worked in gangs by overseers, learned nothing of economy, management or conservation of the soil. In the northern group, on the other hand, the farmer personally performed the farming operations, raised his own foodstuffs and managed his small place with care and foresight. His few slaves worked by his side in the field, and one can

[1] Department of Labor, Bulletin no. 35, p. 731.

[2] Twelfth Census, "Century of Population Growth," p. 69, map showing changes in county lines.

[3] Watkins, Digest of Georgia Laws, p. 291.

[4] G. G. Smith, Story of Georgia, p. 152.

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fancy them absorbing by imitation something of the master's carefulness.

Conditions since the Civil War

The emancipation of the slaves inflicted a far heavier loss upon the planters of the black-belt counties than upon the farmers of the other group, for slaves constituted the bulk of the planter's wealth. His whole economic order shattered, without operating capital or credit, disgusted with the difficulty of working as wage-hands the freedmen with their fantastic ideas of liberty, the planter sold much of his land to the blacks on easy terms, abandoned the remainder to negro croppers and tenants, and moved to town. The land was thus largely given over to the blacks, who, after the novelty of freedom had in a measure worn off, settled down to unintelligent cotton planting. Vast tracts went out of cultivation. Lacking the guidance of white neighbors, the negro naturally remained in ignorance of the progress of agricultural science and learned nothing of the use of labor-saving machinery. He had not as a slave practiced economy, and now as a free man he lived from hand to mouth. The productiveness of the soil was of course impaired and farming lands fell in price.

Since 1860 these conditions have tended to become accentuated. In the black counties the ratio of blacks to whites has steadily increased, as is shown by the percentages for 1860 and 1900 given above on the map; whereas in the white counties, the whites have increased their numerical ascendency. In other words, the white counties have grown whiter, and the black counties blacker. In every county in the black group, the white population was less in 1900 than in 1800, while the black element had increased from three to four hundred per cent. In eight of the ten counties investigated, the percentage of blacks has increased since 1860. The two exceptions are Morgan county, in which the whites are gaining slightly, and Lincoln county, in which the black loss has been notable, amounting to a ten-per-cent decrease. This fact may be connected with the unusually high *per capita* wealth in that county, noted below. Turning to the white group, it is seen from the

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map and Table II that in every county the whites have doubled in numbers and in some counties have increased from four to five hundred per cent since 1800. In five of the nine counties of this group the black percentage has decreased since 1860; in one county the percentage has remained the same; in three counties there is a slight increase of blacks.

Southward movement of mountaineers

During the last ten or fifteen years a significant change has been taking place in these black-belt counties. The large amount of vacant land and its cheapness have attracted an ever increasing number of mountaineers from the northernmost tiers of counties to the plain. The large estates of the black counties are being cut up and sold to these mountain people. This fact doubtless accounts for the upward tendency of the white element of the population in Morgan, Greene, Oglethorpe and Wilkes counties. In the other counties of this group the white population is falling off or is remaining stationary. Particular inquiry on this point was made in Oglethorpe county, and the following interesting letter was elicited from one of the oldest and most prosperous citizens of the county.

The differences between the races here in Oglethorpe are growing more intense and troublesome. A few years ago in Oglethorpe the negro was the laborer and the white men were "bosses," generally, and workers, incidentally. That has all changed now, and the two races are coming into close competition as renters and day laborers. The negro has almost gone out of certain sections of our county, whites have filled in and are doing the work. . . . In the last few years some of our largest farms have been almost depopulated by the negroes' scattering to cities; and the counties above us, having increased in whites until they began to be crowded, and lands in those counties having gone up, these people, hearing of cheap lands in Oglethorpe, came down in great numbers and began to hire to our people. Those that were able began to buy land, so that land which was ten dollars per acre is now twenty-five and thirty dollars. Some of these people are very satisfactory and make good citizens. Others from the mountains, never having worked very much, do not want to be confined very closely and do not exactly fit in in the cotton fields, which demand much work. I am still holding many negro families, but at some loss last year and

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this, by reason of the fact that they are getting out of my control and influence. They do nothing but make a crop, and I have to furnish all their supplies and costly mules, which they abuse in spite of all my caution. The day of cheap labor is over, and even if it could be had it is unreliable and unmanageable. It seems that the larger farmers of Oglethorpe will be compelled in self-defence to sell their lands, because the lawful per cent on the price the lands will bring will be far more profitable than what the farmer can get from renters and croppers.

There are in Oglethorpe county three settlements of these mountaineers: one on the western edge, another in the north-western part of the county and another on the eastern edge.

Supplementary to this movement of mountain people, many farmers from the white group of counties are moving into the black group. Two generations ago the fathers of these men were going in the opposite direction, from the high-priced cotton lands of the black belt to the cheap soil further north. To-day, the skillful and careful working of small holdings by white labor in the white counties has enormously enhanced the value of the land. On the other hand, the negro farmers of the black-belt counties have exhausted the land in some localities and have caused its deterioration in others. Hence, the descendants of the men who fifty years ago moved north are now coming back and buying at a low figure the very land which was once too valuable for their fathers to hold; and by the liberal use of commercial fertilizers and leguminous crops they are building up the soil to its former state of excellence. It may be predicted with some confidence that the coming Census figures on crops and agricultural conditions in general will indicate great improvement in the black-belt counties.[1] This improvement is primarily the direct result of these immigrations; in the second instance, it indicates the effect of competition on the negroes.

The remainder of this paper is the result of an investigation undertaken to ascertain whether or not the diverse history of the two groups of counties and the extreme variation in the proportion of blacks to whites are in any way reflected in the present economic condition of the negroes.

[1] *Cf. infra*, pp. 214, 215.

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The present economic status of negroes in the white counties and in the black counties [1]

It is commonly believed in the South that negroes are most prosperous where they are few in number as compared with the whites. The Census supports this view as regards ownership of land: "In the Gulf states like Alabama the proportion of owners among negro farmers is largest in those counties where two-thirds or more of the farmers are white, and smallest in the counties where two-thirds or more of the farmers are black." [2] The two groups of counties in Georgia here under examination afford an opportunity to test the correctness of this statement. The comparison has been extended, however, beyond the possession of land: it is made to include also stock, farm tools and machinery, household and kitchen furniture. From the Census [3] and the Report of the Comptroller General [4] of Georgia for the corresponding year the following tables have been compiled. In these tables the county having the smallest proportion of blacks has been placed first. It should be said that the values here given were those returned for taxation, and that undervaluation, although by no means peculiar to Georgia, is carried so far in that state as to give rise to serious complaint. In order to get anything like a true idea of the value of land, the returned values should be multiplied by about eight.

Table V affords a rather striking confirmation of the Census observation. As the percentage of blacks increases the percentage of land owners among them tends steadily to decrease; and with few exceptions the same is true of their *per capita*

[1] Tables contained in the Census of 1900 furnish data for a detailed comparison of conditions in the white counties and the black counties which have been selected for examination in this paper. The effect of a predominantly white population in the northern group is seen in the superior yield per acre of the staples, cotton and corn, the higher value of land, improvements and stock, and the greater diversification of crops. As regards intensity of cultivation, the census returns show that in the white counties the average production of cotton per acre under cultivation was 174.9 *lbs.*; in the black counties, 143.4 *lbs.* In the white counties, again, the average production of corn per acre was 10.2 bushels; in the black counties, 7 bushels. *Cf.* Twelfth Census, vol. v, table 19, and various tables in vol. vi.

[2] *Ibid.*, Bulletin no. 8, p. 98.

[3] *Ibid.*, vol. v, table 10.

[4] Report of the Comptroller General of Georgia, 1900, table 16.

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TABLE V

STATISTICS OF OWNERSHIP AMONG THE NEGROES OF THE WHITE COUNTIES

COUNTY	PER CENT BLACK	ACREAGE	PER CENT OWNERS [1]	ASSESSED VALUE	VALUE PER ACRE	FURNITURE
Forsyth ...	9.3	1991	20.18	$6320	$3.17	$1469
Hall.....	15.7	3754	12.63	11430	3.04	6698
Gwinnett ..	16.1	2615	9.41	14998	5.73	5122
Banks	19.8	3544	11.46	11294	3.46	2177
Franklin ..	23.1	2626	5.04	9539	3.63	4740
Hart.....	27.7	2532	4.71	9135	3.60	3525
Madison ..	29.2	3214	6.25	9860	3.06	4248
Jackson ...	31.6	4924	5.43	25400	5.15	6313
Walton ...	39.8	5143	3.78	22780	4.43	9934
Group	26.5	....	8.76	....	$3.91	$5.72 [3]

COUNTY	STOCK	TOOLS AND MACHINES	CITY PROPERTY	AGGREGATE PROPERTY	PER CAPITA [2] PROPERTY
Forsyth ...	$3482	$554	$275	$12,509	$112.23
Hall.....	7527	1183	12,625	46,082	131.72
Gwinnett ..	10,562	1857	4375	37,919	92.91
Banks	6089	1010	575	21,468	66.53
Franklin ..	10,894	2071	1263	30,432	49.02
Hart.....	9268	2350	2250	26,805	46.24
Madison ..	11,047	2318	775	28,622	52.44
Jackson ...	15,078	2580	3190	51,587	58.45
Walton ...	15,039	3292	7860	60,075	56.44
Group	$19.94 [4]	$3.84 [4]	....	....	$74.00

wealth. In Table VI the counties are more nearly on a par, except in the case of Hancock and Wilkes, where the *per capita* wealth is unusually high.

Comparing the groups, it is seen that the percentage of owners among negroes is 8.76 in the white counties as against 5.10 in

[1] Percentage of land owners among negro farmers.

[2] The per capita wealth of negro farmers was roughly estimated by deducting the city property from the aggregate of all property, and dividing by the number of negro farms (See Tables VII and VIII).

[3] Per family, families estimated at one-fifth of the total population.

[4] Per farm.

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TABLE VI

STATISTICS OF OWNERSHIP AMONG THE NEGROES OF THE BLACK COUNTIES

COUNTY	PER CENT BLACK	ACREAGE	PER CENT OWNERS	ASSESSED VALUE	VALUE PER ACRE	FURNITURE
Lincoln	59.4	3733	3.25	$10,372	$2.77	$5751
Warren	66.4	2254	2.87	8065	3.57	13,948
Morgan	67	5855	4.44	23,208	3.94	8832
Greene.....	67.7	7057	5.67	22,698	3.21	14,461
Oglethorpe ..	68.5	9036	3.17	30,579	3.38	4314
Wilkes.....	69.2	13,621	6.30	52,040	3.82	16,185
Taliaferro ...	69.7	7099	9.65	22,009	3.10	6000
Columbia....	72.7	6119	6.61	18,825	3.07	3042
Hancock	74.5	19,703	6.30	89,555	4.54	12,350
Putnam	74.8	5446	2.79	24,590	4.51	5310
Group	69	....	5.10	....	$3.56	$4.63

COUNTY	STOCK	TOOLS AND MACHINES	CITY PROPERTY	AGGREGATE PROPERTY	PER CAPITA PROPERTY
Lincoln	$15,356	$3297	....	$36,056	$73.43
Warren	18,927	4881	$14,260	63,487	61.53
Morgan	19,601	3346	27,295	92,553	52.54
Greene.....	23,509	3748	12,840	77,749	49.70
Oglethorpe ..	17,567	3303	2850	59,396	38.97
Wilkes.....	37,420	7075	58,315	179,430	87.76
Taliaferro ...	18,131	3875	4205	56,192	73.85
Columbia....	17,463	2873	575	43,875	47.20
Hancock	37,202	6844	10,760	173,803	112.90
Putnam	23,338	4055	16,670	74,528	55.79
Group	$21.16	$3.08	....	....	$65.36

the black counties. Further, the *per capita* wealth of the negroes in the white counties is $8.64 higher than in the black counties. When multiplied by eight or ten, to get something like a truthful figure, the difference is a material one. The land in the northern group was returned at a higher rate than that in the southern; the negroes of the white counties make a better showing in the matter of household and kitchen furniture —evidence of a higher standard of living—and in the possession of tools and machinery. The only point in which the figures are in favor of the negroes of the lower group is in the matter

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of stock. As will appear in a subsequent schedule, the bulk of negro farmers in the black counties are "renters," while those in the northern group are "croppers." A renter furnishes his own stock. Careful inquiry in person and by letter leads to the conclusion that the stock nominally owned by renters belongs in the vast majority of cases to some white man, having been bought on time. The amount of stock to which the negroes of the black counties have clear title is beyond doubt far smaller than appears on the surface. The same condition applies to some extent in the other counties, but not so widely, as there are few renters in the northern group. Where a negro owns his land, his possession of stock is usually real possession. Landowning negroes, in the opinion of their white neighbors, make good citizens.

The systems of farming

The most striking contrast between the white and black counties is in the important matter of land tenure. In addition to ownership, there are two widespread systems of tenure, known as the "cropping" system and the "standing rent" system. The Census groups together as "cash tenants" those tenants who pay a cash rental for the use of the soil and those who pay a fixed amount of the crop. In Georgia practically no tenants pay actual cash, so that in this state the term "cash tenants" means "standing renters." Tables VII and VIII show the prevailing tenures in the two groups of counties. A small percentage of "part owners" is ignored in each county.

Statistics show that the cash-tenancy system is spreading in Georgia and that the cropping system is declining.[1] This tendency has usually been interpreted as indicating economic progress,[2] the emergence of the blacks from "what was virtually the old slavery system under another name," as the cropping system has been described,[3] to a higher position. Under the cropping

[1] E. M. Banks, Economics of Land Tenure in Georgia, pp. 88, 89.

[2] *Cf.* Taylor, Agricultural Economics, pp. 261–270, for an excellent discussion of share tenancy and cash tenancy.

[3] DuBois, Negro Landowners of Georgia, p. 668; Bulletin no. 35, Department of Labor, 1901.

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TABLE VII

TENURES OF NEGRO FARMS IN THE WHITE COUNTIES [1]

COUNTY	PER CENT BLACK	TOTAL FARMS	PER CENT OWNERS	PER CENT STANDING RENTERS	PER CENT CROPPERS
Forsyth	9.3	109	20.18	7.3	71.5
Hall	15.7	254	12.63	5.1	81.8
Gwinnett	16.1	361	9.41	7.4	77.5
Banks	19.8	314	11.46	7	79.9
Franklin	23.1	595	5.04	8.2	85.3
Hart	27.7	531	4.71	18.0	74.8
Madison	29.2	544	6.25	25.3	67.0
Jackson	31.6	828	5.43	14.4	77 [2]
Walton	39.8	925	3.78	17.2	77
Group	26.5	...	8.76	12.2	76.8

system the landlord furnishes everything—land, house, stock, seed—and takes half the product of the year as rent. He also commonly feeds the cropper and deducts the charge for supplies from the negro's share; or, in lieu of furnishing him from a commissary, the employer "stands" for the cropper at the neighboring merchant's store. The characteristic feature of this system of farming is strict supervision by the landlord over the operations of the farmer. In reality, the cropper is a day laborer, without responsibility except for the day's work. If through adverse seasons his crop is a total failure, he remains under no obligation to the landlord. The employer takes all the risk. The profits depend on the seasons, the prices, and the amount and character of the supervision the landlord exercises. In point of organization, this system resembles the ante-bellum plantation. Usually, almost invariably, indeed, croppers are found settled on small farms surrounding the residence of the landlord, the cabins close enough to permit the croppers to come in the morning for the stock without undue waste of time. The outlying portions of the plantations, situated at such distance as to make close supervision impracticable, are commonly occupied by standing renters.

Under the standing rent system, the farmer pays a definite

[1] Twelfth Census, vol. v, table 10.

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TABLE VIII

TENURE OF NEGRO FARMS IN THE BLACK COUNTIES

COUNTY	PER CENT BLACK	TOTAL FARMS	PER CENT OWNERS	PER CENT STANDING RENTERS	PER CENT CROPPERS
Lincoln	59.4	491	3.25	72	24
Warren	66.4	800	2.87	44.3	51
Morgan	67	1261	4.44	38.5	55.5
Greene	67.7	1305	5.67	41.2	50.2
Oglethorpe	68.5	1451	3.17	50	45.8
Wilkes	69.2	1380	6.30	55.8	34.8
Taliaferro	69.7	704	9.65	58.5	30.2
Columbia	72.7	922	6.61	56.9	34.1
Hancock	74.5	1444	6.30	64.9	25.1
Putnam	74.8	1037	2.79	56.2	39.5
Group	69	...	5.10	53.8	39

amount of the crop as rental, say one thousand pounds of lint cotton per house farm of thirty acres. The landlord furnishes only the land and house. The negro supplies his own mule and feeds himself, if he can get credit. In this matter custom varies. Very often the landlord is obliged to "stand" for the renter before the merchant will extend credit; in other cases, the negro is considered as good a risk as a white man—all depending on the individual. Competition among the country merchants is becoming so strong that credit is frequently extended to the average negro without the personal endorsement of the landlord. In such cases the merchant takes a second lien on the crop, as well as a mortgage on any chattels possessed by the tenant. There is a large element of risk in such business, and the merchants exact from the tenants a high rate of insurance.

The theoretical advantage of renting is that, after providing for the payment of rent by planting a certain proportion of the farm in cotton, the farmer is free from the control of the landlord and becomes an *entrepreneur* instead of a laborer. If the white or black standing renter be a man of exceptional intelligence and judgment, he has an opportunity to diversify his farming, and by producing foodstuffs he can be independent in

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large measure of the merchant. Unfortunately, the common run of negroes lack the qualities that would enable them to use advantageously the freedom of the renting system. They do not diversify crops. Professor J. F. Dugger, director of the Alabama Polytechnic Institute experiment station, says in a recent issue of *The Progressive Farmer:*

> So far as the writer knows, there is no country in the world, dominated by Caucasians and equal in civilization to America, in which land is cultivated in as careless and inefficient a manner as are the rented cotton fields of many planters in the southern states. If the next census should classify the yield per acre by negro renters as separate from the general average of all farmers, I doubt whether the yield of the (renting) farmer would be half of that obtained by the average man working his own farm. If this assumption is true, that the renting system, as more generally practiced, reduces the productive capacity of the land by half and the final profit of the landlord and tenant by more, then it follows that the system should either be abandoned as soon as possible or else reconstructed.[1]

Professor Duggar goes on to suggest, as the first reform, that the planters stipulate in the rent contracts that the tenant shall "sow cowpeas on every acre from which he harvests wheat or oats, and sow cowpeas in all corn grown in upland, as well as in bottom-land corn in some localities." In the opinion of practically every planter consulted, the standing rent system is bad for both landlord and tenant; and the consensus of opinion is that the negro prefers this system, not so much with the view of bettering his condition, as for the purpose of escaping the supervision of the landlord.

For the purpose of the present study it is fundamentally important to note that share tenancy or cropping overwhelmingly predominates in the white counties; while in the black counties standing renting is the prevalent system. There are no exceptions to the rule in the white counties; in the other group, however, Morgan and Greene form exceptions. If the standing rent system marks a step forward in economic evolution, as is

[1] *The Progressive Farmer*, Raleigh, North Carolina, December 10, 1910.

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generally contended, it would be reasonable to expect the general well-being of the negroes in the black counties under consideration to be superior to that of the blacks in the northern group; but it is evident from Tables V and VI that such is not the case. When it is remembered that during Reconstruction times the conditions in the black belt were very favorable for the acquisition of property by the negroes, it is the more remarkable that the blacks of the northern group have more than held their own and, in the important particular of land ownership, are considerably in the lead. These facts have led the investigator to question the validity of the opinion that the standing renting system indicates advancement. The truth is that cropping tends to prevail in those communities where the landlord lives on his plantation and gives his whole time to the work of supervision. Unless closely supervised, the negro will not work steadily, nor take care of the stock, nor keep up the terraces, hedges and fences, nor even take proper care of the crop at harvest.

Oglethorpe and Jackson counties

In order to bring out clearly this important matter of land tenure, a special inquiry was made in two counties adjoining Clarke, the residence county of the writer. These counties were not chosen as being extremes of their respective groups. Oglethorpe is, however, a somewhat extreme type. The tables given show to what extent they are typical. The choice was made because the two counties are easy of access by railroad and bicycle. Furthermore, both counties are old and are historically contiguous—Clarke having been a part of Jackson, and part of Clarke having been added to Oglethorpe. That is to say, the only difference between the counties is their separate economic development. Another advantage in selecting these two counties is that a number of planters living in Athens (Clarke county) own plantations in Oglethorpe and in Jackson and are thus in a position to speak with authority as regards comparative conditions in the two counties.

Much of the Oglethorpe county farming land is still in large plantations owned by absentee landlords, who reside in Athens,

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Crawford, Lexington and other towns in the vicinity. The owners, usually engaged in other forms of business, are unable to be on the ground to watch the farmers. Hence the cropping system is impracticable, and the owners are driven to the alternative, the standing rent system. In Jackson county, on the contrary, the bulk of the farming lands is owned by relatively small proprietors, who live on the land. That 77 per cent of the Jackson negroes are croppers and only 14 per cent standing renters means that the Jackson county landlords are in a position to give the necessary supervision to the blacks and, where they can induce them to work as croppers, prefer this system. The backwardness of the Oglethorpe negroes and of the agricultural conditions in general in that county may be attributed largely to the fact that the absence of white landlords makes impossible the cropping system. This absentee ownership, with the land left to renters, is characteristic of the black-belt counties, with few exceptions. The writer knows, for instance, of a 5000-acre farm in Warren county—one of the lower group under examination—the owners of which live in Athens, visit the place only twice a year and have no overseer in charge. Standing renters occupy the soil.

The negro's success seems to depend directly on the closeness of contact between him and an intelligent white guide. The cumulative evidence of observation and of testimony by landlords is conclusive on this point. It oftens happens that on the same plantation are found closely supervised croppers and unsupervised renters. There is no mistaking the crop of the cropper. The effect of capable supervision is seen in well-kept terraces, first-class crops of corn and cotton and the presence of workers in the field.

The landlords of both counties bear out the Census statement, that standing renting is increasing and cropping declining; and they feel that this tendency represents a retrogression in agriculture.

Apart from absenteeism, which practically necessitates the standing rent system, there is another factor in this movement, namely, the growing aversion on the part of the negro to supervision. He desires his movements to be absolutely unrestricted;

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and he does not see that this personal freedom often entails economic dependence. In fact, a hardworking cropper has a better chance than the renter of coming into ownership of land and thus reaching the goal of peasant proprietorship. The Census [1] makes this general statement: "Those states with a relatively large percentage of owners. . . . have in nearly all cases fewer cash tenants, or renters, than share tenants, or metayers (croppers), showing that it is as easy to pass directly from share tenancy to ownership as to stop at the intermediate stage." A more reasonable inference would have been that it is easier to pass from share tenancy to ownership than from standing renting to ownership.

The planters interviewed said that a cropper was more likely to end his year with a surplus for investment in land than was the standing renter. The Census bulletin just quoted testifies to the truth of this assertion: "Metayers usually excel in the value per acre of their produce." But this fact is thus explained: "This means that the metayer's chief object is to get a large crop, and that this crop represents a forcing of the natural productiveness of the soil and a neglect of stock-raising"—the inference being that renters conserve the soil.[2] The writer found no planter in the two counties who did not affirm, not only that the profits of the cropper are greater than those of the renter, but that the land, stock and tools used by the cropper are kept in better condition than those used by the renter.

The Census contains no information as to those economic units known as plantations. This important phase of southern agriculture is being investigated for the Census of 1910; and should a differentiation be made between the supervised and the unsupervised plantations, or between the supervised and the

[1] Twelfth Census, Bulletin 8, p. 89.

[2] Taylor, Agricultural Economics, pp. 269, 270, gives a diametrically opposite view, attributing to renters the conduct imputed by the Census to croppers: "The tenant who has a contract for one year is inclined to look too strictly to securing as large a profit as possible for that one year without any regard to the future. As a result of this shortsighted economy, too large a proportion of the land is often devoted to exhausting crops and the larger profit of the one year is obtained at the expense of the profits of future years. The cash tenant (standing renter) sacrifices the long-time average returns in order that his net profit for the one year may be increased."

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unsupervised parts of the same plantation, it is scarcely to be doubted that the production on the supervised tracts would be found far to exceed that of the other class.

Of the many stories picked up in the course of several visits to Jackson and Oglethorpe counties, two are given to illustrate this point of supervision. Negroes frequently get hopeessly in debt to their landlords. In order to extricate themselves they go to a neighboring planter and borrow enough to square up with the creditor, promising to become tenants to the lender and work out the new debt. So great is the competition for laborers that planters take on hands under such circumstances and are glad to get them. Mr. H., of Jackson county, advanced a negro, Ben, money to meet such an emergency. The first year Ben was put on a small farm near the house of the owner. He proved to be a good man and paid about half of his debt with the proceeds of his crop; the second year he not only paid the balance but had a margin to his credit. The third year, Mr. H., seeing that he had found a valuable man, put Ben on a farm some six miles distant and did not exercise the same close supervision as theretofore. The result was a complete failure.

Mr. S., of Oglethorpe county, had a negro working as a renter. At the end of a certain year the output was three bales of cotton. The following year, Mr. S. undertook an experiment in supervision. He took the negro as a cropper on the same land, and, by directing his work and keeping him at it, secured from him an output of twelve bales. When the darky's attention was called to the difference between his first and second year's profits, he expressed the opinion that he would have made sixteen bales if the landlord hadn't "pestered" him so much.

Tendencies shown by Census of 1910

Through the kindness of Dr. L. G. Powers, chief statistician of the Census Bureau, a preliminary report on land tenures in Jackson and Oglethorpe Counties has been obtained. A comparison of the statistics of the various forms of tenure in 1900 and 1910 can therefore be made.

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TABLE IX

MOVEMENTS IN LAND TENURE AMONG NEGROES OF JACKSON AND OGLETHORPE COUNTIES FROM 1900 TO 1910

	OWNERS			STANDING RENTERS			CROPPERS		
	1900	1910	PER CENT INCREASE	1900	1910	PER CENT INCREASE	1900	1910	PER CENT INCREASE
Jackson	45	72	60.0	120	315	233.3	640	731	15.3
Oglethorpe ..	46	100	117.4	725	1047	48.0	665	704	4.8

	PER CENT OWNERS		PER CENT STANDING RENTER		PER CENT CROPPERS	
	1900	1910	1900	1910	1900	1910
Jackson	5.43	5.77	14.49	31.11	77.29	59.18
Oglethorpe ..	3.17	5.26	50.	55.	45.8	37.

These statistics bear out the common belief that the standing rent system is increasing at the expense of the cropping system. During the decade just past the movement in this direction has been very noticeable in Jackson county, where the renters have increased 233.3 per cent in number. In this county they now constitute nearly one-third of the total negro farmers, whereas in 1900 they constituted only about one-seventh. There has been a corresponding decline in the percentage of croppers. Turning to Oglethorpe county, it is evident that conditions have been more stable. The standing renters constitute 55 per cent of all negro farmers as against 50 per cent in 1900. Coincident with this significant growth of the standing rent system in Jackson and its comparative arrest in Oglethorpe, the statistics show that the number of landowners in Oglethorpe increased faster in the last decade than in Jackson, although the percentage of landowners to all farmers is still higher in Jackson.

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Negro schools of Jackson and Oglethorpe

In discussing the various aspects of this subject with a number of farmers who have in recent years moved from Jackson county to Oglethorpe, and with several planters who own and operate places in both counties, it was found to be the general opinion that the Jackson county negroes are more intelligent and business-like than those of Oglethorpe. This fact is attributed partly to the closer contact between the races in Jackson, where two-thirds of the population is white; and partly to the influence of the public schools. In the largely white communities the school facilities are better than in the districts where the whites are less numerous. The reason for this is that in the white communities the public-school fund is supplemented by local taxation.[1] Where such a supplementary tax is levied, blacks as well as whites participate in the improved school facilities, though the former pay only a very small part of the extra tax. Furthermore, the interest of the negro in education increases as we proceed from the practically all-black communities to those where the negro is an inconspicuous factor. It will be suggestive to quote here from a letter received from the county school commissioner of Oglethorpe county:

> In some sections of our county, negroes constitute about ninety per cent of the population, and in these sections they take very little interest in schools; will not send their children and will not pay the teacher anything. In other sections, where they constitute less than fifty per cent of the population, they send to school better and will pay teachers from ten to twenty-five cents per month for each pupil.

In Jackson county sixteen districts levy a special school tax,[2] and the school buildings and equipment have been greatly improved. In Oglethorpe only three districts have voted the tax. Oglethorpe's shortcoming is due to the preponderance of the black population. The white people take the position that

[1] School districts in Georgia are authorized, by a law passed in 1904, to levy a special school tax.

[2] Report of the State School Commissioner, 1908; table 5, pp. 504, 505. Two districts have voted the additional tax since this report was made.

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they prefer to deny their children increased school facilities (the public-school term lasts only from five to seven months) rather than pay for similar advantages for so disproportionate a number of blacks. That the blacks of Jackson have been materially assisted in this matter by the special tax is evident from the fact that there is in this county one teacher to every 68 colored children of school age, while in Oglethorpe the ratio is one teacher to every 85 pupils. Salaries are uniformly higher in Jackson.[1] In Jackson 14 school buildings belonging to the board of education are valued at $12,000,[2] while in

GRADES OF BLACK PUPILS[3]

	FIRST TO THIRD	FOURTH AND FIFTH	SIXTH	SEVENTH
Jackson	904	760	140	29
Oglethorpe	2000	300	100	50

Oglethorpe 21 such buildings are valued at $6000. In Oglethorpe 36 buildings not belonging to the board of education are returned at $3000. The negro children in Jackson ordinarily remain in school longer than in Oglethorpe.

In the first three grades, it will be noted that the Oglethorpe children outnumbered those of Jackson by two to one, but in the fourth and fifth grades the ratio was reversed. Only 2.5 per cent of the Oglethorpe pupils reached the seventh grade, while 3.2 per cent of the Jackson pupils carried their education to that point—a deplorable showing for both, it must be admitted.

Testimony of landlords in Jackson and Oglethorpe

After personal conference with as many leading planters and merchants as could be conveniently interviewed, a series of questions was prepared and mailed to a carefully selected list of a score or more farmers in each county. In addition to inquiries touching the tenures of land and other topics treated in this paper, questions were framed to elicit opinions on the general cause of the prevalent labor troubles.

The most interesting feature of the answers was that the

[1] Report of the State School Commissioner, 1908, table 1.

[2] *Ibid.* table 3. [3] *Ibid.* table 8.

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Jackson county planters replied in the briefest possible manner, in many cases with a single word, while a number of Oglethorpe landlords not only answered the questions by filling out the blank form enclosed but wrote separate letters of from five to ten pages. This fact indicates that conditions are worse in Oglethorpe than in the other county. The following is a type of the letters from Oglethorpe:

I think, without some change for the better (and I see no sign of it), the mountaineer will soon have replaced the negro. The younger set think of nothing but gadding about, baseball, hot suppers, church fights and the city court. The quick-thinking farmers of this county are dropping the negro as fast as they can and filling his place with white tenants. I have always had negro tenants and have been a stanch friend to the negro. Have families on my lands that have been with me from six to twelve years, but as the old ones die out the younger set do not take their places. They join the numerous orders and the church, and when they have finished the rounds of the secret orders and the churches, there is no time left for work, and the crop is not worked. The above is the general rule, with very, very few exceptions.

Four Jackson county landlords put themselves on record as believing that the negroes were progressing, and three planters reported no scarcity of labor due to migration of the blacks. It is interesting to note that all these favorable replies came from the northern half of the county, in which the proportion of blacks to whites is smaller than in the southern half. Only two Oglethorpe planters gave encouraging reports. One of these correspondents lives in the same section of the county from which the letter in regard to the coming of the mountaineer was written[1]; the other lives in Arnoldsville, where is located the largest settlement in the county of recent immigrants. While this is insufficient evidence from which to draw conclusions, it suggests that the pinch of competition is beginning to be felt by the negroes.

On the whole the majority of the writers are pessimistic in regard to the present and the future of the negro. It is said in many letters that the younger generation is rapidly becoming

[1] *Cf. supra*, p. 202.

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unmanageable. The trouble seems to be a deep-seated dislike of control and discontent with farming life and conditions. The tendency is strong to wander from plantation to plantation and to the towns. Various causes, economic and social, are offered in explanation of this condition of things. In Georgia this is an era of unprecedented activity in the opening-up of new and the reviving of old industries—construction of railways (including street railways in the towns), erection of public buildings, paving, installation of waterworks and other civic improvements. The supply of labor for these industries is inadequate, and the result is an exodus of the negroes from the country to the towns and cities. In these employments good day wages are paid in cash, whereas on the farm, except for occasional advances, payment comes at the end of the year—if, indeed, the tenant finds himself entitled to a balance. So high is the price of labor and so low the negro's standard of living, that three days' work in town or on the railroad affords him subsistence for a week. He then usually prefers to rest the remainder of the week. The city of Atlanta has recently taken severe measures to rid the streets of vagrants. Most of them are said to be negroes with money in their pockets. The abnormal condition of the labor market is well illustrated by the following clipping from the daily press. It is peculiarly striking, because it comes from Albany, Dougherty county, one of the blackest counties in the state.[1]

The price of day labor in this section is threatening to soar to heights never reached before. The rivalry between industrial concerns and builders employing large forces of laborers is unprecedentedly keen, and the ordinary workman is in demand. An idea of the extremes to which competition is being carried can be gathered from the case of one enterprising manager of a big plant who made satisfactory arrangements with the pastor of a local negro church, as the result of which the preacher at the Sunday night service announced from the pulpit that the plant which the enterprising manager controlled was offering $1.60 a day for ordinary labor . . . . The keen demand in the towns and cities is causing farmers no little uneasiness. Labor was scarce in

[1] The population of Dougherty County in 1900 was: negroes 11,228; whites 2451. An excellent sketch of the conditions existing among the negroes of this county may be found in Du Bois, The Souls of Black Folk, ch. vii.

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January, when arrangements for the year's operations were being made, and many farmers have yet to secure the help that will be required before the crops are made . . . . The very high prices which ordinary day laborers are suddenly able to command is inducing many blacks who had signed contracts to work on farms to pay up their indebtedness to their employers and go into fertilizer factories, brick yards, lumber and cotton mills and on building projects.[1]

It is also doubtless true that the systems of farming already described make for discontent in the country. Under both systems, landlords are inclined to insist on the planting of cotton to the exclusion of other crops. To this rule there are gratifying exceptions; but in general the tenant is not sufficiently encouraged to produce corn, hay, hogs, cattle or poultry. All his energies are expended in making cotton. Foodstuffs come from the merchant. The credit system and the lack of diversification in farming are fatal to the negro, and, indeed, to the white farmer.

While such forces as these are at work, the migrations of the masses of negroes are not by any means entirely in response to such stimuli. It has been shown time and again that negro tenants will, wholly without grievance, leave places in which they have advanced from poverty to comparative comfort,[2] simply because they "jest want a change." The blacks are naturally easy-going and improvident. They need the stress of competition and the presence of examples of industry. One of the ablest leaders of the race says: "In nine cases out of ten where a negro in the South is found owning property, he has had an individual white man or a group of southern white men to help guide and encourage him in this respect."[3] The black man's powers of imitation are great; and where his energies are properly guided and he is encouraged to practice self-restraint and prudence—taught to defer present enjoyment for future good—many a black man has become a prosperous and upright citizen. But the population of the southern states is so small

[1] *The Atlanta Constitution*, March 13, 1910.

[2] A. H. Stone, Studies in the American Race Problem, *passim*.

[3] Booker T. Washington, in *Atlanta Journal*, January 13, 1910.

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and the proportion of blacks to whites so great that, under the present conditions, it is not surprising that the progress of the negroes is slow and that in some sections there appears to be no progress. The greatest need seems to be the increasing of the proportion of whites to blacks. This end might be reached in two ways: first, by the emigration of negroes to other and predominantly white sections; second, by attracting white immigration to the South. The first of these modes of remedying the situation seems unlikely to affect the masses of the negroes; the second holds out promise of greater influence. The profound industrial and agricultural revolution through which the South is now passing will inevitably draw immigrants. The movement has, in fact, already begun; and while some southerners are at present unconvinced of the desirability of immigrants, the advantage of an abundant labor supply will doubtless in time overcome their objections, which are superficial and, in some instances, unreasonable. The establishment of a small proprietor class should prove a great incentive to the negro, pointing out to him the goal to be reached as the reward of industry.

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SOUTHERN NON-SLAVEHOLDERS IN THE ELECTION OF 1860

MORE than one historian has been puzzled by the attitude of the non-slaveholding whites of the South toward slavery. Dr. James Ford Rhodes, after studying the statistics of slaveholding, reaches the conclusion that less than one-third of the southern white population (6,125,000 in 1850) had any material interest in the preservation of slavery. But even this does not represent the true situation, he continues, for many classed as slaveholders were only laborers who had accumulated money enough to buy one or two slaves and who still worked side by side with their chattels. The real slaveholding oligarchy numbered fewer than eight thousand. In fixing upon this number he takes the ownership of fifty or more slaves as putting their proprietor in the oligarchical class. As for the poor whites, they "looked on the prosperity of the slaveholding lord with rank and sullen envy; his trappings contrasted painfully with their want of comforts." Yet, in spite of the absence of any material interest in slavery and in spite of a real antipathy on the part of many toward the slaveholders, the poor and envious neighbors of the "slaveholding lord" voted as he desired. The reason why they did this was because he knew so well how to play upon their contempt for the negro and

to make it appear that his and their interests were identical, that, when election day came, the whites, who were without money and without slaves, did the bidding of the lord of the plantation. When southern interests were in danger it was the poor whites who voted for their preservation. The slaveholders, and the members of the society which clustered around them, took the offices. It was extremely rare that a man who had ever labored with his hands was sent to Congress from the South, or chosen to one of the prominent positions in the state.[1]

[1] Rhodes, History of the United States, vol. i, p. 345.

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Professor Hart, writing a few years later, is not so ready with an explanation. He says:

> One of the perplexing things in human history is that these people, who owned no slaves, who received nothing from the profits of slave labor, and who were put out of the pale of slaveholding society, should have accepted with so little question the leadership of the slaveholders, and should have demanded so little for themselves and their children out of the surplus produced by slavery. Helper's burning appeal to the poor whites for "No coöperation with Slaveholders in Politics—No Fellowship with them in Religion—No affiliation with them in Society" met with no response.[1]

The inference from the foregoing is that the great slaveholders marshaled the non-slaveholders to the defense of their interests and finally put them on the "aggressive defensive." Yet Jefferson Davis, one of the great slaveholders, says that the people complained of him as being too slow. Just whom he meant by "the people" would be hard to say, but he does not seem to have had the great slaveholders in mind.

These observations and others of like tenor have prompted an investigation, the object of which is to ascertain just what was the attitude of "the people," both slaveholders and non-slaveholders, especially the latter, in that most critical of all American elections, the presidential election of 1860. The investigation has been confined almost wholly to the cotton states of the lower South, where slaves were most numerous and where the so-called slavery interests were most energetically asserted.

It is assumed that the reader is familiar with the main facts of our history from 1850 to 1860. It may be proper, however, to state a few facts which are not matters of common and general knowledge. One of these is that as early as 1850 resistance was preached in the South and that a few secession conventions were actually called. But these were deflected from their purpose, and the spirit of secession subsided until the Dred Scott decision had discredited Douglas's popular sovereignty doctrines in the South and the Kansas troubles and the

[1] Slavery and Abolition (American Nation Series), p. 76.

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fugitive slave law had so unified the North as to make it highly probable that some candidate opposed to the extension of slavery, some "black Republican," would be elected to the presidency. Then the South began to prepare itself for the struggle and squarely to face the probable results—division of the Democratic party in case Douglas refused to surrender his "popular sovereignty" views, and secession in case of Republican success.

Another fact is that, in this period, the South was not a political unit except on the general proposition that slavery was a good institution. The "solid South" has so long been a common-place that to-day it is hard to realize that in 1860 there were two parties in the South. Both indeed were devoted to slavery, but one was more aggressive than the other.

That the more aggressive spirit of the radical party was not called into existence by the national conventions of 1860 is easily demonstrable. One has only to examine the files of newspapers and the records of county and state conventions for a year or two previous to 1860 to be convinced of this fact. For example, in 1859 the Democratic convention of Noxubee county, Mississippi, voted not to support Douglass should he be nominated at Charleston[1]; and the Oktibbeha convention repudiated "with loathing and contempt the odious doctrine recently promulgated by Stephen A. Douglas, that a Southerner can be dispossessed of his property by operation of unfriendly territorial legislation."[2] Discussing the selection of delegates to Charleston, the *Mississippi Democrat*[3] said that "delegates must be chosen who would insist upon the endorsement of the doctrine enunciated in the Dred Scott decision, and the promulgation of those principles in a form so clear as to admit of but one construction." Mississippi would go into the convention in good faith, but her promise to abide by the result was based on the supposition that the foregoing principles would not be violated in the platform or in the choice of the candidate. In De-

[1] *Mississippi Democrat*, August 13, 1859.

[2] Natchez *Free Trader*, September 16, 1859.

[3] September 17, 1859. For all reference to Mississippi newspapers the author is indebted to Miss Cleo Hearon, of the Normal School, Columbus, Mississippi.

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cember the state convention met, adopted resolutions in harmony with the Oktibbeha resolutions and elected radical delegates to the Charleston convention. These expressions are typical of what was occurring all over the South, especially the lower South. If threats of secession were excluded from official platforms or appeared only in veiled aspect, they abounded in conversation, in newspaper editorials and in public speeches. For example, in July, 1859, Senator Iverson delivered a speech at Griffin, Georgia, in which he declared that the election of a black Republican was highly probable, in which event he would favor secession and an independent confederacy. Governor Brown, of Georgia, also took the same position in his inaugural address.[1]

Such, then, must have been the sentiments of the people, or of a good part of them. Who were the people, or this part of them? It is impossible to tell how many slaves were owned by each man who attended these county conventions or how each delegate voted, but it is safe to assume that a good many did not belong to the oligarchy of eight thousand. Indeed, we know that some of them were far from this class, that some owned no slaves. Certain it is that many of the newspapers were neither owned nor edited by the oligarchy. Were the editors subject to their dictation?

The Whig party as a national organization was dead, but there were in the South many "old line Whigs" who were unwilling to unite with the Democrats on a radical program. It is a well-known fact that many of the great slaveholders belonged to this class. Statistics of the division are not available to the writer, but, if they are ever brought to light, he will not be surprised to find that the majority of the eight thousand were on the conservative side. The conservatives were at least sufficiently numerous to act collectively. Some prominent slaveholders, who were unwilling to follow the radicals and equally unwilling to support Douglas, took steps to organize another party. County and state conventions were held, and at these resolu-

[1] Phillips, "Georgia and States Rights," in the Annual Report of the American Historical Association, 1901, vol. ii, pp. 164–191.

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tions were adopted, the general tenor of which was conservative. It must be confessed, however, that the Georgia convention was radical enough to have satisfied fire-eaters of the Yancey and Toombs type, for it insisted on the obligation of the federal government to protect slavery in the territories.

Such, then, must have been the sentiment of another part of the people. Who made up this part? In this case no more definite answer can be given than in the other.

Concerning the delegates to the national conventions a little more information is obtainable. So far as concerns their direct interest in slavery the statistics are incomplete, but enough have been secured to show that many of the southern delegates, probably a majority, owned slaves.[1] Of the thirty-six Georgia delegates to the Charleston convention, some eight or ten may be classed as belonging to the oligarchy; out of the thirty-three Alabama delegates, five or six; of the thirteen Mississippians, two or three; and a few from Louisiana belonged to the same class. Several delegates, however, owned very few slaves, and a few owned none. Some of the most radical of the fire-eaters belonged to the last class; such, for example, was D. C. Glenn, of Mississippi, who, when his state withdrew from the convention, made a speech which produced the deepest impression on Halstead as an exposition of the radical position.[2] Glenn was well seconded by Jefferson Lamar, of Georgia, another non-slaveholder. But W. B. Gaulden, who owned 114 slaves, was no less radical. So far as concerns the ownership of slaves, it would be hard to make any distinction between the delegates to the Charleston convention and those who took part in the Constitutional Union convention; but Halstead tells us that the "eminently respectable" class was very prominent in the latter.

Among the delegates to Charleston, lawyers and office-holders were as numerous and as prominent as they usually are in American politics. Here was a great crisis in which the plan-

[1] Information on this subject has been secured from the unpublished records of the Census Bureau at Washington, and by correspondence with Hon. George Hillyer, the only surviving member of the Georgia delegation, and with the descendants and relatives of the delegates.

[2] Halstead, Political Conventions of 1860, p. 67.

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ters were primarily concerned, yet few of them came forward as leaders. Were the lawyers and politicians really voicing the sentiment of the planters, or were they creating a situation and asking the planters to follow them? In view of the conservatism of many of the great slaveholders, the writer is inclined to accept the latter view, and to hold that these politicians were not the hired attorneys of the "interests," but their self-appointed guardians, perpetually displaying impending dangers for the sake of place and power.

The results of the conventions was that the radicals, under the leadership of Breckinridge, put slavery above union in the immediate present: for them the time for radical action was at hand. The conservatives, now associated in the Constitutional Union party and accepting the leadership of Bell, also put slavery above union, but remotely: they did not believe that the situation justified extreme measures at that time. Neither had any hope of electing their candidate, at least in the electoral college. In voting for Breckinridge or Bell the southern voter understood that he was simply voting for or against secession in case Lincoln should be elected. The votes cast for Douglas—and he received some—were also against secession. Not every voter consciously went through this mental process in reaching a conclusion. The old party habit was strong, and it had its influence, especially among the Whig-Americans. But the old Democratic party had been shattered into fragments, and we must believe that voters, in determining which fragment was "regular," were largely influenced by their attitude toward the disruption of the Union. This explanation is, I believe, substantially accurate for the lower South, although it would not hold in Virginia, where the western counties voted for Breckinridge and then seceded from the state rather than leave the Union.

In the election, Bell did not carry a single state in the lower South; but he received a large vote, and he and Douglas, that is, the conservative candidates, together received a majority of the votes cast in Georgia and Louisiana. In these two states we find that the vote cast by the slaveless whites amounted to at least 62 and 57 per cent respectively of the total vote. From

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this we might conclude that the slaveless whites were inclined to be conservative; but when we find that in Mississippi, where they cast at least 56 per cent of the total vote, Breckinridge received 58 per cent of it (a majority of 12,474), and that in Alabama, where they cast at least 58 per cent of the total vote, he received 60 per cent of it (a majority of 7305), our confidence in this view is shaken. It is still more shaken by a glance at some of the totals. The total vote in Georgia was 106,365, of which Breckinridge received 51,889, though there were only 41,084 slaveholders in the state and it is known that many of these did not vote for him. Even less reconcilable with the view in question are the returns from Texas, where Breckinridge received 47,547 out of 62,659 votes, though the slaveholders numbered only 21,878.[1]

But the strongest evidence against the view that the slaveless whites were conservative is to be found in the returns from single counties. In Alabama, the home of Yancey, the protaggonist of secession, Douglas carried five counties and Bell five, and, but for the results in other counties, the conservative victories here might be attributed to the votes of non-slaveholders; for if all the slaveholders in the five Douglas counties had voted, they would have cast only 33 per cent of the vote polled, and in the five Bell counties the slaveless whites cast at least 56 per cent of the total vote. In one of the Bell counties they cast at least 83 per cent. But in four other counties which went for Breckinridge the slaveless whites cast at least 71 per cent of the vote, and in eight other counties they cast 63 per cent. An examination of the statistics of these counties as regards the value of realty and of personalty does not seem to warrant any distinction between conservative and radical counties on the basis of wealth. It is worth noting, however, that four of the poorest counties, where the farms were worth only $3,230,893 and the personalty $4,994,871, gave Breckinridge clear majorities.

In Mississippi Bell carried ten counties. These were all on the Mississippi River or close to it and were distinctly the region

[1] All election returns are taken from the Tribune Almanac, 1861. All figures relating to slaveholding are taken from the Census of 1860.

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of the great slaveholders. The total population of these counties was 145,028, of which the blacks composed 74 per cent. The value of the farms in nine of these counties—the Census contains no statistics for Washington county—was $50,913,401, and that of the personalty, of which slaves made up a great part, was $91,581,564. Of 4428 farms, 1752 contained from 100 to 499 acres each; 438, from 500 to 999 each; and 139 contained over 1000 each. Of 953 small farms, ranging from 20 to 49 acres, 776 were in two counties. Of 4702 slaveholders, 2067, or 44 per cent, owned ten or more slaves. Had all the slaveholders in these counties voted, they might have cast nearly 54 per cent of the vote polled, which was 8739.

In twelve other counties of Mississippi, Bell received about 40 per cent of the votes; Breckinridge, 58 per cent; and Douglas, two per cent. The population of these counties was 203,175, of which the blacks made up 61 per cent. The farms were valued at $70,207,110, the personalty at $141,314,042. The slaveholders numbered 7268, of whom those owning ten or more made up 52 per cent. The number of slaveholders was equal to 42 per cent of the vote cast.

In thirteen selected counties Breckinridge received 75 or more per cent of the votes cast. The population of these counties was 93,031, of which the whites made up 64 per cent. The farms in these counties were valued at only $22,179,447, the personalty at $47,981,650. The slaveholders numbered 4227, of whom those owning ten or more slaves made up 28 per cent. The total number of slaveholders was equal to only 45 per cent of the vote cast.

If the great slaveholders led, one is tempted to ask: which of them and which way? In Issequana county there were 587 white people and 7244 slaves. There were 115 slaveholders, of whom 98 owned over ten slaves, while 44 owned 50 or more. Out of 243 votes cast, Bell received 133; Breckinridge, 104; Douglas, six. In Teshemingo County there were 19,159 whites to 4981 slaves. Out of 707 slaveholders only 157 owned over ten slaves. Of the total vote polled, 3453, the slaveholders, had they all voted, could have cast but 24 per cent; yet Breckinridge received 1748, or nearly 55 per cent. In other words,

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just as in Issequana, the vote was almost equally divided between the conservative and the radical parties.

On the whole, it seems a little safer to venture on generalizations in Mississippi than in Alabama. In Mississippi nine counties which voted for Bell had 2067 slaveholders owning over ten slaves each, while thirteen Breckinridge counties had only 1152 of these oligarchs. The farms in the nine Bell counties were valued at $50,913,401 and the personalty at $91,581,564, while in the thirteen Breckinridge counties the figures were $22,179,447 and $47,981,650 respectively. This would seem to indicate a tendency toward conservatism in the wealthy slaveholding counties and toward radicalism in the poorer counties where there were fewer slaveholders.

In Louisiana, Bell carried nine parishes and received 40 per cent of the total vote of the state; Douglas carried three parishes and received 15 per cent. of the vote. The parishes carried by Bell had a population of 180,895 whites to 63,356 slaves, or, leaving out New Orleans, 31,832 whites to 48,872 slaves. In only two parishes carried by Bell outside of New Orleans was the white population greater than the black, and these were wealthy parishes. The population of the three Douglas parishes stood 18,629 whites to 21,867 slaves, and in one parish the whites slightly outnumbered the blacks. In fifteen Breckinridge counties the population was 59,540 whites to 133,585 slaves and in only one of these were the whites more numerous. In several the excess of the black population was very great, as in Concordia, where there were only 1242 whites to 12,542 slaves, and in Tensas, where there were 1479 whites to 15,592 slaves. The Breckinridge counties were somewhat more wealthy than those voting for Bell and Douglas. New Orleans, like Mobile, voted a conservative ticket.

In some respects the result in Louisiana is almost as puzzling as that in Alabama. Parishes with great slaveholders and many slaves voted for Bell or Breckinridge with apparent indifference. Yet a careful analysis of the situation and of the results seems to warrant the same conclusion as that reached in regard to Mississippi.

The case of Georgia is the most interesting of all. The popu-

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lation of the state in 1860 was 591,588 whites and 462,198 slaves. Out of 41,084 slaveholders only 13,893 owned ten or more slaves. The total vote, 106,365, indicates that comparatively few males twenty-one years of age failed to exercise the franchise in 1860. Assuming that all the slaveholders voted, which is very improbable, they were outnumbered by the slaveless voters to the extent of 24,197. That is, the non-slaveholders cast at least 61 per cent of the total vote. Breckinridge carried the state, though he received only 48 per cent of the ballots.

For 1860 the state may easily be divided into three political zones. The first includes all of southern Georgia; it is marked off by drawing a line from the eastern border a few miles above Savannah to Quitman county on the west, some miles below Columbus. It contains 37 counties, only three of which voted for Bell. The central zone extends to a line drawn from the southern boundary of Carroll county on the west, running northeast so as to include Fulton county (Atlanta) and touching the northern border of Elbert on the east. It contains 60 counties, six of which voted for Douglas, 30 for Bell and 21 for Breckinridge. In the three remaining counties there was a conservative majority, though Breckinridge received a plurality. For example, in Muscogee county Bell and Douglas had a majority of 158, but Breckinridge a plurality of two. The northern zone contains 37 counties, all but seven of which gave Breckinridge pluralities or majorities.

If we examine the relation of the races in the several counties, we find that in the northern zone the whites made up 90 per cent of the population in 12 counties and over 75 per cent in 15 more, and in no county did they fall below 60 per cent. With few exceptions the vote followed the same line of division; the whiter the county the surer it was to vote for Breckinridge. On the west were four counties in which the whites constituted only 60 to 70 per cent of the population, and these four voted for Bell. In three other counties which voted for him the whites made up only 75 per cent. Not one of those counties in which they constituted 90 per cent of the population supported him.

In the northeastern corner of this zone are ten counties, all

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contiguous, in which there were 49,421 whites and only 3664 slaves. The farms, of which only five contained from 500 to 999 acres and only two 1000 acres or more, were valued at $5,642,378, the personalty at $5,475,913. There were only 720 slaveholders, of whom only 101 owned ten or more slaves. Yet, out of 7547 votes cast, Breckinridge received 63 per cent, Bell only 23 per cent. As the total number of the slaveholders equaled only nine per cent of the vote cast, it is absolutely certain that Breckinridge drew his main support from the non-slaveholding class, although large numbers of them must have voted for Bell or Douglas.

In the middle section the election was closely contested. In 13 counties the population was about equally divided between whites and slaves. Seven of these were carried by Bell and seven by Breckinridge, though in one of the latter the vote was almost equally divided. In 12 counties the whites made up from 50 to 60 per cent of the population. Five of these were carried by Bell, six by Breckinridge (in one he had a bare plurality), one by Douglas. In eight counties the whites made up from 60 to 75 per cent of the population. Four of these were carried by Breckinridge, three by Bell and one by Douglas. In eight counties the slaves formed from 50 to 60 per cent of the population. Four of these sided with Breckinridge, three with Bell and one with Douglas. In 18 counties the slaves constituted from 60 to 75 per cent of the population. Bell carried 12 of these, Douglas three and Breckinridge three.

Of the counties last mentioned, 12 lay in the northeastern part of the middle zone. The slaves made up 67 per cent of the population. The value of the farms, of which 206 comprised 1000 acres or more and 563 from 500 to 999 acres, was $22,166,732; the value of the personalty was $73,181,911. The persons owning ten or more slaves numbered 2377, equaling 29 per cent of the vote polled, and the total number of slaveholders, 5311, equaled 65 per cent of the vote. It is a striking fact that in these counties Breckinridge received only 21 per cent of the vote.

The foregoing facts seem to warrant the conclusion that in Georgia the conservative parties were strongest in those coun-

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ties where there was the most wealth and the most slaves and where the majority of the people were directly or indirectly interested in slavery. There are some noteworthy exceptions, but not enough to vitiate the general conclusion. This can only mean that Breckinridge, the radical candidate, drew his main support from the non-slaveholders. Indeed, without their support, he would have been hopelessly beaten. In Mississippi, as we have seen, there was a decided tendency in the wealthy slaveholding counties to support the conservative Bell and a no less marked tendency in the poorer white counties to support the radical Breckinridge. In Alabama the case is not so clear. Possibly Yancey had hypnotized the slaveholders. In Louisiana, where many wealthy black parishes voted for Breckinridge, it is also true that only one poor white parish supported Bell, and that Bell and Douglas together polled a majority.

Before leaving this subject it is proper to call attention to the fact that several wealthy localities where the wealth was not based on slavery, at least not directly, also supported the conservatives. Such were the cities of New Orleans, Mobile and Augusta. Savannah also polled a large conservative vote, though Breckinridge carried the county. These were commercial towns and the agitation was disturbing business.

Were the slaveholding lords dictators in politics? Possibly so; but they do not seem to have exercised their dictatorial powers for a common end. In speaking of the slaveless whites Dr. Rhodes seems to have had in mind only the poorer whites. What about the non-slaveholders who were neither poor nor ignorant? Perhaps the answer to these questions may help to remove Professor Hart's bewilderment over the failure of Helper to organize a white man's party.

The evidence makes it quite clear that neither the slaveholders nor the non-slaveholders were a united class. The former were pretty well united on the rightfulness of their claims, although there was occasional dissent even on that point; but they were divided on questions of political expediency. The non-slaveholders were divided by cross lines. A perpendicular line divided them, as it divided the slaveholders,

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into sections representing respectively the Whig and the Democratic party traditions, while a horizontal line divided the professional class from the great body of toilers. In the upper class of non-slaveholders should be placed the professional man who owned but a few slaves, from one to five, for his interests were not closely identified with those of the great slaveholders. From one point of view, he had less community of interest with the great slaveholders than had the small farmer with a few slaves, because he was not likely to care about acquiring any more slaves, whereas the farmer hoped "to raise more cotton to get more land to buy more slaves to raise more cotton to get more land to buy more slaves," until he too should become a slave lord. From another point of view, however, the interests of the professional class were closely bound up with those of the great slaveholders. The lawyer, if not a planter himself, must look to the wealthy slaveholding planter for his fees; and so it was with the physician, the editor, the teacher and the preacher. The merchant, also, if not directly interested in planting, found among the slaveholding planters his best customers. The situation was not essentially different from that which exists to-day, when many lawyers and editors, some physicians and, it may be, even a few teachers and preachers, whose prosperity depends, directly or indirectly, upon the prosperity of the great corporations, vote, whenever election day comes, for whatever the corporations want. To-day we have the ins and outs, the pros and a few antis; then there were the ins and outs, because the planters themselves were divided on some issues, but practically all were pros.

Of course the class under discussion would never admit the truth of the foregoing interpretation of their attitude, either in 1860 or to-day. A questionnaire addressed to men now living who voted in 1860 brought scanty results, but some of the answers were interesting. Only two men who owned no slaves replied. One was an editor. He voted for Breckinridge because he believed in state rights and "personal liberty." He probably meant personal liberty for the whites—the liberty to get all the slaves they could. The other, at the time, was a young lawyer, just admitted to the bar. He voted for Douglas;

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and probably his main reason for doing so was the fact that his brother was an elector on the Douglas ticket. Furthermore, he lived in the same county with Alexander H. Stephens, who supported Douglas.

The diary of a Mississippi planter who owned about twenty-five or thirty slaves was examined with intense interest to see his attitude in politics. For about ten years the entries were numerous, most of them relating to the management of his estate, prospective profits, losses, or domestic affairs. Not until 1863 was there the slightest allusion to politics.[1]

It is hardly correct to say that men who had ever labored with their hands very rarely rose to prominence in southern public life. Among those who were prominent in 1860 were many who, although slaveholders, really came from the non-slaveholding class, and several who had labored with their own hands, such as Alexander H. Stephens, Andrew Johnson and Joseph E. Brown. Three of the governors of aristocratic old Virginia between 1841 and 1861 are said to have come from the laboring class, one having been a tailor and two having been farm hands. Some of these remained more or less true to their original class, but some became identified with the privileged few.

The men of that day recognized the anomalous situation of a slaveless class voting with and for the masters of slaves, but they were ready with explanations based on interests either economic or social. Speaking before the Senate, in 1856, Senator Brown of Mississippi said that the non-slaveholding whites might have no pecuniary interest in slavery, but that they had a social interest of greater moment than all the wealth of the Indies. As the blacks were in a majority, they would, if freed, at once begin a contest for supremacy. The whites able to do so would abandon the state and leave the poor whites to bear the brunt of the struggle. Therefore the non-slaveholders would be the first to fly to arms in defense of slavery.[2] After the John Brown raid Senator Toombs offered substantially the same explanation:

A very large portion of the people in Georgia own no slaves. In the

[1] Publications of the Mississippi Historical Society, vol. x, pp. 305 *et seq.*

[2] December 22, 1856, *Globe*, appendix, 34th Congress, second session.

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mountains there are comparatively few of them; but no part of our people are more loyal to their race and country than our brave mountain population; and every flash of the electric wires brings me cheering news from the mountain tops and our valleys that these sons of Georgia are excelled by none of their countrymen in loyalty to the rights, the honor and the glory of the commonwealth. They say, and well say, this is our question; we want no mongrel race to degrade our own; and as one man they would meet you upon the border, with the sword in one hand and the torch in the other.[1]

A survivor of 1860 and a young historian of to-day, when asked for an explanation, offered the same: that the poor whites were simply following their natural leaders, the wealthy and intelligent few. To a great extent this has always been true.

Possibly these explanations do not go to the bottom of the question, but as far as they go they appear to be true. It may be added that this class of white people to-day furnishes the bitterest enemies of the free negro, just as the working class in California hates the Chinese and the Japanese, whose lower standard of living enables them to rob the American of his job.

Professor Hart wonders why the poor whites "demanded so little of the surplus produced by slavery." We have been taught—by Professor Hart himself, I think, among others—that slavery produced little or no surplus. But, granting that there was a surplus, the failure of the poor whites to demand a greater part of it is no more strange than some more or less similar phenomena observed since the abolition of slavery. A demand for greater educational advantages would perhaps have been the most natural form which the demand for a part of slavery's surplus could take. But excessive individualism, inherited from revolutionary days, said that education was a private affair, and that every man must be secure in the possession of his property, even if his neighbors did remain in ignorance.

The man without money and without slaves was thus generally without education. Such people usually follow a leader. In political parties they had no choice except between the Whigs and Democrats, both slavery parties, until the advent of the Republican party. Of this party the poor whites in the lower

[1] Quoted in Reed, The Brothers' War, p. 270.

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South knew nothing except what they heard from their slaveholding neighbors, and they had no chance to vote with it. A few heard its appeal in the border states: witness the vote for Lincoln in Maryland, Virginia, Kentucky and Missouri. The poor whites of the lower South did not heed Helper's appeal for a white man's party; they never heard it. The slaveless whites who were not poor were not ready for it.

One might go further and say that it was not slavery *per se*, but the presence of an ignorant and degraded population, with no attempt to elevate the slave and practically no collective effort to elevate the free laborer, which made and continued these conditions. A change would have come, a white man's party would have been formed, had there been assurance of no interference from without; and the poor whites would have risen in life, possibly not so rapidly as they have risen, possibly more rapidly than they have risen since abolition was accomplished by fire and sword; but that is another story and quite outside the scope of this paper.

There is yet one other reason why the slaveless white man may have seen cause to vote the radical ticket in 1860. In some cases he was the man most likely to be benefited by slavery in the territories. Just as in earlier days poor men had moved from South Carolina to Alabama, Mississippi, Louisiana and Texas to become masters of land and slaves, so perhaps in 1860 some dreamed of bettering their lot in the same way in Kansas. The lord of a hundred slaves and a great plantation was not likely to go, and to him the protection of slavery in the territories was an academic question, unless, perchance, he had a few slaves to sell; but the man with a few slaves might well go. Hence his demand for protection to his property in the territories, should he carry with him any property of this kind. And even if he had no intention of going into Kansas, the man with a few slaves wanted this abolition agitation stopped; and with him stood many a man who had no slaves. The possession of slaves seemed the most direct road to affluence and respectability, and by that road they hoped to enter the privileged class.

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GOVERNMENT BY JUDICIARY

THE most momentous question before the people of this country today is undoubtedly the question of the limits of the power of the judiciary to annul legislation for alleged unconstitutionality. When Mr. Roosevelt opened his campaign for the so-called "new nationalism," he was forced to make what was called by his opponents "an attack upon the judiciary." The general election that followed was largely fought, at least in the eastern part of the country, on the issue thus made; and the fight against the new nationalism has since been largely a fight for the preservation of the powers of the judiciary as they exist today.

The fact that Mr. Roosevelt denied the allegation, claiming to have made no "attack" upon the judiciary, does not change the situation. It is of course true that Mr. Roosevelt did not attack the judiciary as an institution: he merely criticised some of the decisions of one of our courts. But that court is the highest court in the land. And criticism of courts must be admitted to stand on an entirely different footing from criticism of other public functionaries, notably from that directed against legislative assemblies. Legislators—and, within certain circumscribed limits, executives—are vested with discretion to act as the public interest may, in their opinion, from time to time require. Criticism of their public acts does not necessarily involve anything more than the expression of a different opinion as to what is best calculated to promote the public good under certain circumstances. It is different with judges. They are not supposed to be vested with any discretion to act as they see fit in the interest of the public welfare. They are supposed to find the law written down in former decisions or in statutes, in the making of which they have no share, and to apply the law which they find to the facts of the cases presented to them, irrespective of their opinion of its wisdom or unwisdom. Ordinarily, therefore, criticism of the judgments of a court implies

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a reflection upon either the legal knowledge or the integrity of its members.

Our courts are, however, in a different position—or, at least, it is claimed that they are in a different position—with respect to their power to declare legislation void for alleged unconstitutionality. It is claimed by those who criticise certain of the decisions of our courts on that subject that in dealing with constitutional questions our courts exercise legislative powers under the form of judicial decrees, and that the canons of criticism which usually apply to acts of legislatures are therefore applicable to our courts with respect to such decisions. It is this that Mr. Roosevelt implied, when he said, in his Denver speech:

> The courts occupy a position of importance in our government such as they occupy in no other government, because, instead of dealing only with the rights of one man face to face with his fellow-men, as is the case in other governments, they here pass upon the fundamental governmental rights of the people as exercised through their legislative and executive officers.

And it is the same position that is expressed in a very forcible and striking manner in an editorial article on "The Flexibility of the Law," which appeared recently in *The Outlook*. The editor of the *The Outlook* said:

> In our judgment the real Constitution of the United States, the Constitution under which we are living, the Constitution to which the decisions of all our subordinate courts must conform, the Constitution to which all legislative acts, whether State or National, are subject, is not the written Constitution which was formed in 1787. It is that written Constitution *plus* the decisions of the Supreme Court of the United States interpreting and applying it, and the habit of the Nation which has grown up under it. *The Outlook* has been criticised for talking about the written Constitution as though there were any other. There is another; and in its binding force upon the American people this other Constitution is quite as important as the written document.
>
> The Supreme Court of the United States decided by a majority of one that an income tax was constitutional. Then one judge changed his mind and the Supreme Court decided that an income tax was unconstitutional. It is now unquestioned, or at least unquestionable,

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that an income tax cannot constitutionally be levied by Congress upon the people of the United States. What makes such a tax unconstitutional is the Supreme Court's decision interpreting the written Constitution. What made the Supreme Court's decision, interpreting the written Constitution, is the decision of the one judge who changed his mind.[1]

But this is by no means admitted by the other side. Indeed, it is emphatically denied, at least as far as the conclusions are concerned.

Some time after Mr. Roosevelt delivered his famous speech at Denver, Mr. Justice Lurton, of the United States Supreme Court, delivered an address on the subject to the joint bar associations of Virginia and Maryland. That address was subsequently published as the leading article in the January issue of the *North American Review*, under the title: "A Government of Law or a Government of Men?" In that article the distinguished jurist states what may be termed the "conservative" position on the subject, which is diametrically opposed to that just stated. Judge Lurton categorically denies that the courts now exercise any legislative powers, that is to say, powers involving the exercise of discretion or the following out of political policies. He asserts heroically that, in declaring legislation unconstitutional, our courts merely apply the law as they find it plainly written in the Constitution, precisely as any court applies the law in any ordinary judgment. He then proceeds to defend this power generally, and he closes with an appeal to his readers to

> rejoice that in standing by the institutions which have for more than a century made us the most law-abiding people of the earth, that we are walking in the footsteps of our fathers when we maintain in letter and spirit that division of the great functions of government which the men of Massachusetts and the men of Virginia and the men of Maryland declared with Montesquieu to be the best security for a government of laws and the only safeguard against a return to a government of men.[2]

[1] *The Outlook*, December 17, 1910, vol. xcvi, p. 848.

[2] *North American Review*, vol. 193, p. 25.

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Judge Lurton's appeal to American traditions puts his opponents in the awkward position of unpatriotic men, trying to undo the work of the great men who established this government, and of reactionaries, attempting to abolish one of the most effective safeguards of our free institutions against the tyranny of a mere "government of men." It is, therefore, but fair that we should inquire into the facts of the case, historical and contemporary, and compare them with the assertions on which Judge Lurton bases his conclusions, in an endeavor to arrive at an independent judgment as to whether or not his conclusions are warranted by the facts of the case.

The salient points of Judge Lurton's argument, asserted by him as matters of fact, are as follows:

(1) That the framers of the Constitution, owing to their philosophical training in the school of Montesquieu and the governmental usage of the states prior to the adoption of the United States Constitution, considered it necessary, or at least expedient, as part of the scheme of division of all governmental powers into three independent departments, to invest the judiciary with the power to annul legislation whenever the judges should find it to be unconstitutional.

(2) That by the Constitution framed by them, they intended to invest, and did in fact invest, the judiciary with such power.

(3) That the judiciary of this country has exercised that power ever since, in the manner in which the framers of the Constitution intended it to be exercised, without any change; and that the exercise of this power for "more than a century" has made us "the most law-abiding people of the earth."

(4) That the rules of "constitutional construction" applied by our courts in the exercise of this power are so plain and simple that their application does not, in fact, involve any element of discretion; and that the courts, therefore, never have exercised, nor do they now exercise, any legislative powers in annulling legislative acts on the ground of alleged unconstitutionality.

On this last point, which is perhaps the most important, Judge Lurton says:

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There is nothing in the past history of either the National or State judiciary which gives sanction to any such abuse of power or supports an expectation that the function of interpreting will be tortured into an exercise of legislative power. The rules of construction are plain and simple of application. They are in substance identical, whether the instrument for interpretation be a statute or a contract.[1]

A careful examination of "the facts of the case," it seems to me, will show conclusively that each and every one of these propositions is erroneous. Indeed, the evidence against some of them is so overwhelming that its complete presentation would require several volumes. It is my purpose in the following pages to take up Judge Lurton's position point by point, and to present as much of what I consider to be the evidence against it as may be compressed into the narrow limits of a magazine essay. An examination of these points, in the order stated by me, will also serve to present to the reader a historical picture of the growth of the power under consideration, showing its gradual development and the vast, indeed revolutionary, changes which have taken place in its application. And this examination will, it seems to me, establish conclusively at least two points: first, that the power under consideration did not emerge in its present form from the brains of the framers, as Minerva sprang, fully panoplied, from the head of Jupiter; and, second, that the epithet "revolutionary," applied by Judge Lurton to the demands of the progressives, could be more fitly applied to the latest actions of our courts.

I

In this inquiry we may take as a starting point the proposition, which is not disputed by Judge Lurton, that at the time of the American Revolution the power of the judiciary to annul legislation regularly enacted by the legislative department did not exist anywhere in the civilized world. It did not exist in England, which we took as a model in framing our government. Blackstone, who enjoyed in the United States great influence as a writer on all legal subjects during the years following the Rev-

[1] *North American Review*, vol. 193, p. 24.

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olution, in discussing the question whether "acts of parliament contrary to reason are void," said:

If the parliament will positively enact a thing to be done which is unreasonable, I know of no power in the ordinary forms of the constitution that is vested with authority to control it; and the examples usually alleged in support of this sense of the rule do none of them prove that, where the main object of a statute is unreasonable, the judges are at liberty to reject it; for that were to set the judicial power above that of the legislature, which would be subversive of all government. . . . There is no court that has power to defeat the intent of the legislature, when couched in such evident and express words as to leave no doubt whether it was the intent of the legislature or no.[1]. . . So long therefore as the English constitution lasts, we may venture to affirm that the power of parliament is absolute and without control.[2]

And Montesquieu, whose authority Judge Lurton invokes, gives no support to the judge's argument. It is indeed one of the ironies of fate that Montesquieu should be cited as authority for the supremacy of the judiciary over the legislature, in view of that philosopher's well-known admiration for the English government system of that day, upon which he based his theory of the division of the governmental powers. A reading of his works will prove conclusively that nothing could have been further from his mind than the ideas imputed to him by Judge Lurton. Judge Lurton himself quotes from Montesquieu the following passage, which to the ordinary mind would seem to dispose of the matter very effectually: "In republics," says the great French philosopher, "the very nature of the constitution requires the judges to follow the letter of the law; otherwise the law might be explained to the prejudice of citizens in cases where their honor, property or life is concerned." But Judge Lurton, true to our judicial tradition, established in recent years, "interprets" this passage by a method which is neither plain nor simple, but which does violence to ordinary common sense; and he certainly "explains it to the prejudice" of its author. Significantly enough, Judge Lurton is not able

[1] Commentaries (Lewis's edition), Introduction, p. 91.

[2] *Ibid.* book i, p. 162.

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to quote a single line from Montesquieu which would in any way countenance his fanciful interpretation.

In his appeal to American usage Judge Lurton fares no better than in his appeal to foreign authority. He says on this point:

> From the beginning it [the power to declare legislation void for unconstitutionality] has been claimed by American Courts as a proper function of the Courts under our American constitutional system. It is a doctrine which originated in the Courts of the States long before the adoption of the Federal Constitution. Professor Thayer, in his Constitutional Cases, refers to no less than five decisions by State Courts prior to the adoption of the Constitution of the United States, in which it was held that the power of State legislation was limited by constitutional restrictions, and that it was the duty of the judicial power to declare legislation repugnant to such superior law void and unenforceable whenever necessary to determine the rights of parties in pending cases. The earliest of reported cases is that of Commonwealth *v.* Caton, decided by the Virginia Court of Appeals in 1782.

And then he adds, wonderingly:

> Neither that case, nor either of the decisions I refer to, are cited by Chief Justice Marshall in Marbury *v.* Madison, although they afford a body of opinion of commanding influence which one cannot suppose the great Chief Justice to have been ignorant of, especially as one of them was from his own State.[1]

The fact that Chief Justice Marshall did not quote these cases should have warned Judge Lurton that they do not "afford a body of opinion of commanding influence." In fact, they afford nothing of the sort. They simply prove that, shortly before the time of the adoption of the Constitution, a few judges made isolated and timid attempts to exercise such powers. These attempts aroused general indignation, and the judges were called to account for their conduct. A brief statement of three of these cases will suffice to reproduce the historical atmosphere. The first two cases which Judge Lurton finds in Professor Thayer's collection may be ignored, because they do not deal with legislative enactments which were in con-

[1] *Loc. cit.* pp. 16, 17.

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flict with written constitutions.[1] The three cases which require notice are: Rutgers *v.* Waddington, (New York, 1784); Trevett *v.* Weeden (Rhode Island, 1786); and Den *v.* Singleton, also known as Bayard *v.* Singleton (North Carolina, 1787).

Rutgers *v.* Waddington[2] was decided by an inferior New York court, the mayor's court of New York City. The law under consideration was a New York statute which was claimed to be in conflict with the law of nations and the treaty of peace with Great Britain. The court specifically declared the power of the legislature to be supreme in all matters of legislation and not subject to any revisory power of the court; but it disregarded the portion of the statute which was called into question on the theory that the legislature could not have intended to violate the law of nations and bring the United States into conflict with treaty obligations.

This decision brought forth a storm of protests. Mass meet-

[1] Paxton's case (Massachusetts Superior Court, 1761), is not in point, because the writ of assistance issued to Paxton, of which the validity was questioned, was not issued by the legislature of the colony but by the judges; and its validity was questioned, not because its issue was alleged to be in conflict with any written constitution, for there was no such constitution in existence, but because its issue was alleged to be contrary to English law. The justices were unanimously of the opinion that the writ might be granted. Professor Thayer does not reproduce the case (which is briefly reported in Quincy, pp. 51–57); but from the appendix to Quincy's Reports, p. 520, he reprints (Cases on Constitutional Law, vol. i, p. 48) an abstract of the argument of counsel (Otis), to the effect that the act of Parliament under which the writ was issued was of no effect because contrary to the laws of nature. Some English judges had expressed the same notion—that laws contrary to natural law were void—but no such doctrine was ever established in Great Britain, nor does the decision in Paxton's case indicate that the Massachusetts judges accepted it.

Commonwealth *v.* Caton, (Virginia Court of Appeals, 1782; 4 Call, 5; Thayer, Cases, vol. i, p. 55)—the only case which Judge Lurton names—is not in point, because the court had before it nothing resembling a legislative enactment. What was before the court was an attempt on the part of one house of the legislature to grant to certain persons, convicted of treason, a pardon, which could be granted only by the concurrent action of the two houses. On its face the alleged pardon was nothing but a bill which had failed to become law, and no court in the world would have treated it as possessing any force. Professor Thayer reprints the case because the judges declared *obiter* that they were competent to determine the validity of legislative enactments alleged to be in conflict with the constitution of the state.

[2] Thayer, Cases on Constitutional Law, vol. i, p. 63.

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ings were called to protest against the usurpation of power by the judiciary, and ringing resolutions denouncing it were adopted. The New York Assembly took a hand in the matter, and passed the following resolution:

> Resolved, that the judgment aforesaid is, in its tendency, subversive of all law and good order and leads directly to anarchy and confusion; because if a court instituted for the benefit and government of a corporation may take upon them to dispense with and act in direct violation of a plain and known law of the State, all other courts, either superior or inferior, may do the like; and therewith will end all our dear-bought rights and privileges, and legislatures become useless.[1]

The case was compromised and never went to the supreme court.

Trevett *v.* Weeden[2] was the first of these cases in which it may fairly be said that a law was declared unconstitutional. The legislature of Rhode Island tried to force a paper currency upon an unwilling people. It made the refusal to take paper money instead of specie a criminal offence and abolished trial by jury in this class of cases. It was the abolition of trial by jury that was declared unconstitutional.

The legislature immediately passed a resolution condemning the decision and cited the judges to appear before its bar and answer for their conduct. The judges obeyed the summons but justified their conduct by claiming independence. A motion was made to remove them from office; but, as their term of office was soon to expire, the legislature, which had the appointment of their successors, let them serve out their term, and then dropped them all except one, and appointed others who did not claim any such powers for the judiciary.[3]

Bayard *v.* Singleton,[4] which was decided in North Carolina while the Philadelphia Constitutional Convention was in session, was also a case where the legislature attempted to force upon

[1] Thayer, Cases, vol. i, note on pp. 72, 73, citing Dawson's introduction to the pamphlet in which the case was printed, and Coxe, Judicial Power, pp. 223 *et seq.*

[2] *Ibid.* p. 73.

[3] Coxe, *op. cit.*, pp. 234 *et seq.* *Cf.* Baldwin, The American Judiciary, p. 110.

[4] Martin (N. C.) p. 42. Thayer, Cases, vol. i, p. 78.

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an unwilling people an unjust law depriving those whom it affected of a jury trial. In this case, also, the law abolishing trial by jury was declared unconstitutional. And in this case also the decision called forth a storm of excitement and protest. One of its severest critics was Richard D. Spaight, one of the framers of the Constitution, and afterwards governor of his state. In his denunciation of this decision he said:

I do not pretend to vindicate the law which has been the subject of controversy; it is immaterial what law they have declared void; it is their usurpation of the authority to do it, that I complain of, as I do positively deny that they have any such power. . . . It would have been absurd, and contrary to the practice of all the world, had the constitution vested such power in them, as would have operated as an absolute negative on the proceedings of the legislature, which no judiciary ought ever to possess, and the state, instead of being governed by the representatives in general assembly would be subject to the will of three individuals, who united in their own persons the legislative and judiciary powers, which no monarch in Europe enjoys, and which would be more despotic than the Roman decemvirate, and equally insufferable.[1]

Such were the state "precedents,"[2] and such was the temper of the people at the time the Philadelphia Convention met to frame the United States Constitution. Small wonder that Chief Justice Marshall did not refer in his decision in Marbury *v.* Madison to these "precedents." He was too near in point of time to this "body of opinion" to hazard citing it in support of his contention without considerable damage to his reputation.

[1] Coxe, Judicial Power, p. 252.

[2] There is another case, earlier than Commonwealth *v.* Caton, which is not mentioned by Professor Thayer or Judge Lurton, but which seems in point. The text of the decision is not preserved, but its character seems well attested. In Holmes *v.* Walton (New Jersey Supreme Court, 1780; *American Historical Review*, vol. iv, pp. 456 *et seq.*), a state law making certain cases triable by a jury of six was set aside, apparently because in conflict with the state constitution. This decision aroused popular protests similar to those noted above in the other cases: complaints "poured in upon the Assembly." The lower house attempted to confirm the law; but the Council opposed this action, and the matter was compromised.

For the sake of making our review complete, it may be said that in a letter from John B. Cutting to Thomas Jefferson, dated London, July 11, 1788, it is stated that

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II

Turning now from pre-convention history to the Constitutional Convention itself, and to the document which that convention framed, the candid student must admit that there is absolutely no evidence whatever of any intention on the part of that body to invest the judiciary with any sort of control over federal legislation, or over state legislation in matters admittedly within the legislative competence of the states. And even if it be assumed, as it is commonly assumed to-day, that in those matters in which state legislation was made subordinate to the federal Constitution and laws it was the judiciary, rather than any other federal governmental department, that was to act as the guardian of federal power against state aggression, there is not the slightest evidence that the framers intended to confer upon the judiciary anything approaching the degree of control over state legislation which in later times and by slow expansion of "implied" authority the judges came to exercise. There undoubtedly were some men in the Convention who favored the investing of the federal judiciary with general revisory powers over legislation; but all attempts to make the judiciary part of the legislative power of the federal government failed signally and had to be abandoned by their sponsors. The provisions of the Constitution as they now stand contain no reference whatever to any such powers, either expressly or by obvious implication. And there is ample historical proof that—whatever the hopes of some, from the complete silence of the document, as to possible future development—the great majority of the framers never suspected that a general power of the judiciary to control legislation could be interpreted into the new Constitution. They evidently assumed that such an extraordinary power could not be exercised unless expressly granted.

The judiciary article as finally formulated was adopted without a dissenting vote and almost without discussion. It is absurd to assume that the many avowed opponents of judicial

a law of Massachusetts had been pronounced unconstitutional by the supreme court of that state, and that it had been repealed at the next session of the legislature (Massachusetts Historical Society, Proceedings, 1903, second series, vol. xvii, p. 507). Of this case there is no record nor is there any other mention.

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control of legislation who sat in the Convention would have agreed to the article without a murmur had they suspected that it contained even a part of the enormous power which our judiciary now exercises. Richard Spaight for one, whose fiery denunciation of this power I have quoted above, would have made the halls in which the Convention met ring to the echo with his emphatic protest, had he suspected any such implications. And it is equally certain that had the Convention given to the courts that power, either expressly or by necessary implication, apparent to the ordinary mind, the Constitution would have been overwhelmingly rejected by the people.

A careful examination of all the evidence on the subject now extant leads to the conclusion that the Constitution was adopted by the Philadelphia Convention, and ratified by the people of the states, without any belief, without even a suspicion on the part of the great majority of those voting for it, whether in or out of the Constitutional Convention, that it contained any such implications. Even Hamilton, who saw more clearly than did the others the possibilities arising from the silence of the document on this vital point, probably never dreamed of any such development of the judicial power as has taken place since his day. Mr. Joseph P. Cotton, Jr., puts the case rather mildly when he says, in his introductory essay to the latest edition of John Marshall's constitutional decisions, in speaking of Marbury *v.* Madison:

> Common as this conception of the powers of our courts now is, it is hard to comprehend the amazing quality of it then. No court in England had such a power; there was no express warrant for it in the words of the Constitution; the existence of it was denied by every other branch of the government and by the dominant majority of the country. Moreover, no such power had been clearly anticipated by the framers of the Constitution, nor was it a necessary implication from the scheme of government they had established.

Mr. Cotton may well call the decision in Marbury *v.* Madison "amazing," for prior to that decision the federal judiciary itself did not claim to have obtained the powers in question by the adoption of the Constitution. Hayburn's case, so-called,

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gives a fair picture of the way in which the judges themselves regarded the relative positions of legislature and judiciary, under the government established by the Constitution, during the first years after its adoption. The consideration of that case should be prefaced by the remark that, upon the adoption of the Constitution, and because the powers now under consideration were not then believed to have been granted by the Constitution, the federal judiciary was considered of little importance, and so inferior and subordinate to the legislative and executive departments that our first presidents had great difficulty in getting men of high standing to accept positions on the United States Supreme Court. The judges themselves were evidently in fear of encroachments by the legislative department upon their dignity and prerogatives. That was the atmosphere in which arose the following facts, which are usually referred to as "Hayburn's case."[1]

The first United States Congress passed an act "to provide for the settlement of the claims of widows and orphans barred by the limitations heretofore established, and to regulate the claims to invalid pensions." Under the provisions of this act the claims were to be passed upon by the federal circuit courts, whose decisions were to be subject to the consideration of the secretary of war, and, if the secretary saw fit, to suspension, and to the revision of Congress itself. The question of unconstitutionality, in the modern sense of the word, was not involved. But the judges saw in this act of Congress an encroachment upon the dignity and independence of the judicial department. For this view there was good reason; for if the duties assigned to the judges were regarded as non-judicial and ministerial, it was not fit that such a burden should be imposed upon them; and if, on the other hand, these new duties were regarded as judicial, the independence of the courts was endangered by assigning to the executive and legislative departments power to revise judicial decisions.

What were the courts to do? We can readily imagine what they would do now, in any similar emergency. What they act-

[1] 2 Dallas, 409.

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ually did then shows how far we have traveled from the points of view held by the men of Massachusetts and of Virginia and of Maryland, who formed this government of ours.

The members of the circuit court for the district of New York (Mr. Jay, chief justice of the United States, Mr. Cushing, associate justice of the United States Supreme Court, and Mr. Duane, district judge) stated, in writing, their objections to the law. They held that the duties which Congress had assigned to the court were "not judicial, nor directed to be performed judicially," and that the court as such could not perform them. But, they said, "as the judges desire to manifest, on all proper occasions, and in every proper manner, their high respect for the national legislature," they would execute this act in the capacity of commissioners. And they proceeded to perform the duties imposed upon them.

The members of the circuit court for the district of Pennsylvania (Messrs. Wilson and Blair, associate justices of the United States Supreme Court, and Mr. Peters, district judge) and the members of the circuit for the district of North Carolina (Mr. Iredell, associate justice of the United States Supreme Court, and Mr. Sitgreaves, district judge) declined to act; and they sent "representations" to the president, explaining their apparently insubordinate conduct.[1] These "representations" are

[1] The "representation" which the Pennsylvania circuit court sent to the president reads as follows:

"To you it officially belongs to 'take care that the laws' of the United States 'be faithfully executed.' Before you, therefore, we think it our duty to lay the sentiments, which, on a late painful occasion, governed us with regard to an act passed by the legislature of the union.

"The people of the United States have vested in Congress all *legislative* powers 'granted in the constitution.' They have vested in one Supreme court, and in such inferior courts as the Congress shall establish, 'the *judicial* power of the United States.' It is worthy of remark, that in Congress the *whole* legislative power of the United States is not vested. An important part of that power was exercised by the people themselves, when they 'ordained and established the Constitution.' This Constitution is 'the Supreme Law of the Land.' This supreme law 'all judicial officers of the United States are bound, by oath or affirmation, to support.'

"It is a principle important to freedom, that in government, the *judicial* should be distinct from, and independent of, the legislative department. To this important principle, the people of the United States, in forming their Constitution, have manifested the highest regard. They have placed their *judicial* power, not in Congress,

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strange reading to the lawyers of to-day. We are used to different language from members of the "most august judicial tribunal in the world."

The matter was afterwards brought up by the attorney-general before the United States Supreme Court, on the question whether the judges had a right to decline to act. And the official report says, that, although the judges were all agreed as to the unconstitutionality of the law, "the Court observed, that they would hold the motion under advisement until the next term; but no decision was ever pronounced, as the legislature, at an intermediate session, provided, in another way, for the relief of the pensioners."[1]

No decision pronouncing an act of legislation void because repugnant to the federal constitution was rendered prior to Marbury *v.* Madison. The case of Calder *v.* Bull,[2] decided in 1789, in which an act of the Connecticut legislature was upheld, is interesting, just as Otis's argument in the Paxton case is interesting, because in delivering the opinion of the Supreme Court Mr. Justice Chase went out of his way to give his views on the abstract proposition of the right of the courts to annul legislation, irrespective of constitutional limitations, on the

but in '*courts*.' They have ordained that the 'Judges of those courts shall hold their offices during good behaviour,' and that 'during their continuance in office, their salaries shall not be diminished.'

"Congress have lately passed an act, to regulate, among other things, 'the claims to invalid pensions.' Upon due consideration, we have been unanimously of opinion, that, under this act, the Circuit court held for the Pennsylvania district could not proceed.

"1st. Because the business directed by this act is not of a judicial nature. It forms no part of the power vested by the Constitution in the courts of the United States; the Circuit court must, consequently, have proceeded *without* constitutional authority. 2nd. Because, if, upon that business, the court had proceeded, its *judgments* (for its *opinions* are its judgments) might, under the same act, have been revised and controuled by the legislature, and by an officer in the executive department. Such revision and controul we deemed radically inconsistent with the independence of that judicial power which is vested in the courts; and, consequently, with that important principle which is so strictly observed by the Constitution of the United States.

"These, Sir, are the reasons for our conduct. Be assured that, though it became necessary, it was far from being pleasant. To be obliged to act contrary, either to the obvious directions of Congress, or to a constitutional principle, in our judgment equally obvious, excited feelings in us, which we hope never to experience again."

[1] Hayburn's Case, 2 Dallas, 409. [2] 3 Dallas, 386.

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ground that it is "contrary to the great first principles of the social compact." The case is interesting, further, because, in asserting *obiter* the authority of the court to declare unconstitutional laws void, Mr. Justice Iredell described the authority as "of a delicate and awful nature" and said that "the court will never resort to that authority but in a clear and urgent case." To the view propounded by Chief Justice Chase, Justice Iredell took exception, saying:

> If, on the other hand, the legislature of the union or the legislature of any member of the union shall pass a law within the general scope of their constitutional power, the court cannot pronounce it to be void, merely because it is in their judgment contrary to the principles of natural justice. The ideas of natural justice are regulated by no fixed standard; the ablest and the purest men have differed upon the subject; and all that the court could properly say in such an event would be, that the legislature (possessed of an equal right of opinion) had passed an act, which, in the opinion of the judges, was inconsistent with the abstract principles of natural justice.

III

In 1803 came Chief Justice Marshall's decision in Marbury *v.* Madison. Since this is not an inquiry into the broad question whether or not the courts should have the power to declare legislation unconstitutional under any circumstances, but rather a historical sketch of the development of that power, I shall not enter upon a discussion of the merits of that decision. Suffice it to say that historically it was, as Mr. Cotton calls it, "amazing"; and that as a matter of legal reasoning it has been pronounced by many eminent thinkers unsatisfactory. Nearly twenty-five years later Chief Justice Gibson of the Pennsylvania supreme court, one of the ablest judges that ever sat on that great bench, called Marshall's argument "inconclusive."

Its "amazing" quality does not, however, exhaust its historical interest. It was undoubtedly a turning point in the history of our political institutions. But it lacked much of being what it has since been often represented to be, and what it is generally understood to be by students of and writers on the subject. It is therefore worth our while to examine a little

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more closely into its immediate significance, at the time when it was rendered.[1] Its positive historical importance lies in the fact that here, for the first time in our federal history, a court undertook to base a decision on its alleged power to declare a law null and void for alleged repugnance to the written constitution. The right previously asserted by some judges as an abstract proposition was thereby turned into a concrete power, to be reckoned with as a part and parcel of our political system. It created the politico-legal foundation upon which the imposing edifice of that power as it now exists was gradually erected.

But the power which was actually exercised in this case was a very limited power. Two points should be carefully noted. In the first place, the law which the decision annulled was one peculiarly relating to the judicial department and its powers, much like the law which was questioned in Hayburn's case. In this instance, however, the law conferred upon one of the fed-

[1] The facts of this celebrated case, in so far as they are material to an understanding of the decision, were as follows. After the great victory of the Republicans in the election of 1800—"the Revolution of 1800" as Jefferson called it—the Federalists utilized the brief term of power which was left them to remodel the federal judicial system and to fill the federal courts with their partisans. As part of that work they created, by an act passed February 27, 1801, certain justiceships for the District of Columbia; and one William Marbury, the plaintiff in the case, was appointed to one of these justiceships. His nomination was confirmed by the Senate March 3, the last day of the Adams administration, and his commission was signed that night by the president and sealed by Marshall, then secretary of state. On that night Marshall himself was commissioned as chief justice of the United States. Marbury's commission, however, was left undelivered for lack of time; and when Jefferson took office he forbade its issuance, on the ground that the appointment did not take effect until the delivery of the commission, and he was therefore free to revoke it. Marbury then applied to the Supreme Court, now headed by Marshall, for a *mandamus* compelling Madison, Jefferson's secretary of state, to issue to him his commission. To the order made by the court, commanding the new secretary of state to show cause why the *mandamus* should not issue, Madison paid no attention. After long deliberation, the court gave its decision in 1803, refusing to issue the *mandamus*. In the opinion delivered by Marshall, the court based its decision, not on the contention put forward on behalf of the administration, that Marbury was not legally appointed and therefore not entitled to the commission, which contention it expressly overruled, but on the alleged lack of power in the Supreme Court to issue a *mandamus*. In order to arrive at this latter conclusion, the court had to declare unconstitutional a statute passed by Congress giving the Supreme Court such power. And it is this part of the opinion that has made it famous.

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eral courts, namely, the Supreme Court, a distinctly judicial power. In fact it increased the power of the Supreme Court. What was really decided, in Marbury *v.* Madison, was that the Supreme Court had received certain powers from the Constitution itself, which Congress would not be permitted by that court either to increase or to diminish. One might very well agree with that contention, without attributing to the Supreme Court a general right of reviewing the acts of Congress in matters of general legislation. From the claim that the judicial department is a co-equal branch of the government, and that its purely judicial powers and jurisdiction, in so far as they are expressly given by the Constitution, cannot be encroached upon by Congress, which is all that the case actually decided, it is a far cry to the claim that the Supreme Court is the sole interpreter of the Constitution and that its interpretation is binding on the legislative department in all matters of legislation. In the second place, there is a wide difference, particularly in political matters, between the refusal to exercise a power which one's opponent believes to exist—which is all that those who did not agree with Marshall could say—and the actual exercise of a power which that opponent believes not to exist. To the opponent the first may be unnecessary modesty or weakness or, at the very worst, neglect of duty; but the second is usurpation.

A further point deserves notice. The practical result of the decision, and the only result that the ordinary man could see, was a victory for Marshall's political opponents, the Jeffersonians. Marbury, a Federalist appointee of Adams, applied to a court controlled by Federalists for a writ of *mandamus* compelling Jefferson's secretary of state to give him the commission signed by the outgoing Federalist secretary of state. He claimed the writ under a law passed by the Federalists. The Supreme Court annulled the Federalist law and non-suited the Federalist claimant. Jefferson won a practical and substantial victory. What did it matter what reasoning Marshall employed in giving Jefferson the victory? The "man in the street" knew nothing of Marshall's reasons. And if he did, he did not care. He seldom does care for such niceties. He is so intensely "practical." He may have thought that Marshall used a great deal

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of technical language and acute reasoning in order to save the face of the court. In short, there was nothing in the decision to bring its importance, whatever that was, home to the "practical man"—a fact which is often of controlling importance in historical events.

Of course there were not wanting at that time those who could read the future. One of them was Jefferson. They saw the legal significance of this decision and its possible implications, and they denounced it in unmeasured terms. Jefferson bade it defiance; and it is safe to say that, had there been any attempt to do anything under this decision while Jefferson was president, it would have provoked a conflict in which the judiciary might easily have come out second-best.

But in fact nothing was done under the power asserted by the court in Marbury *v.* Madison during the following thirty-odd years of Marshall's chief-justiceship. Why this was so, it is not necessary here to inquire. I will say however, in passing, that Marshall's position as a constitutional lawyer and statesman has been much misapprehended, owing to later attempts to base the judicial power on his decision in Marbury *v.* Madison. In my opinion Marshall's great place in the history of our country is due, not to any doctrine of the limitations of the legislative power, which others deduced from that decision more than half a century later and with but doubtful warrant, but to the liberal spirit in which he interpreted, and thus helped to develop, the legislative powers of Congress.

Nor was the power to annul federal legislation used by the federal judiciary for many years after Marshall's death, not indeed until the troublous times which immediately preceded the Civil War. During Marshall's chief-justiceship and under his successors, a number of state enactments were declared void because in conflict with the federal Constitution, and particularly because of attempted encroachment upon powers attributed to Congress; but the first case in which an ordinary law of Congress was declared unconstitutional was that of Dred Scott. And the only case besides Marbury *v.* Madison in which any law of Congress can be said to have been declared unconstitutional before the fateful Dred Scott decision was the

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negligible case of Fereira *v.* the United States, decided but a few years earlier. It will thus be seen that for at least half a century no attempt was made by the federal judiciary to exercise the power asserted in Marbury *v.* Madison. And when it did act in this sense, it acted under extraordinary circumstances, in an attempt to solve by judicial decree an extraordinary political problem; and the attempt had extraordinary and disastrous results.

In the meantime the conflict over this power was raging in other fields. The state courts in several instances attempted to follow up the logic of Marbury *v.* Madison. The state courts were in this respect in a much better situation than the federal courts. The acts of the state legislatures were admittedly subject to review by the judiciary, both federal and state, on the score of repugnancy to the federal Constitution, treaties and statutes, in matters of a federal character. From this it was but one step—and a step which a layman could not always see—to the power of review on the score of repugnancy to the respective state constitutions. And yet this step was not taken unopposed, even after Marbury *v.* Madison. The ensuing conflicts form one of the most interesting chapters in our history—a chapter unfortunately now entirely neglected, the common lot of all struggles which end in defeat.[1] It may be said in general, that the actual exercise of this power by the judiciary of the several states during the first fifty years after the adoption of the Constitution was very rare; that it was used only under extraordinary circumstances; and that its use almost always provoked great public excitement and sometimes entailed results of a more serious sort. In Kentucky it at one time led to the creation of two rival courts, each defying the other, and it almost led to the creation of two state governments.[2] In view of these conflicts, and of the disastrous results attending the first important use of the federal judicial power to annul an act

[1] In reference to these struggles, *cf.* American State Papers, Misc., vol. ii, pp. 2, 6; Sketch of Hon. Calvin Pease, *Western Law Monthly*, June, 1863, quoted in Cooley, Constitutional Limitations (7th ed.), pp. 229, 230; Niles Register, vol. xxiii supplement, p. 155; Collins, History of Kentucky, vol. i, pp. 218 *et seq.*

[2] Baldwin, The American Judiciary, pp. 113–115.

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of Congress in the Dred Scott case, it sounds like bitter irony when Judge Lurton says that this power has made us "for more than a century the most law-abiding people of the earth."

In most of the states, however, the power in question, although generally asserted, was not used at all during the first half of Judge Lurton's "more than a century." This was the case, for example, in Pennsylvania, then the leading state of the Union. During the half-century following the adoption of the United States Constitution the Pennsylvania courts did not declare a single law unconstitutional, although the judges, with one notable exception, usually asserted that right. There may have been other exceptions, for it is probable that the doctrine was not quite so universally accepted even by the judiciary, either in Pennsylvania or elsewhere, as is now imagined; but the one exception known to us is that of Judge John B. Gibson, for many years judge of the Pennsylvania supreme court, part of the time its chief justice, and one of the ablest men who ever sat on that renowned bench. His opinion, officially stated in 1825, is a most convincing (and in my judgment quite unanswerable) argument against the existence as well as against the expediency of the power of the judiciary to review legislation under any circumstances.[1] Its historical importance, however, lies in the fact that, nearly a quarter of a century after Marbury *v.* Madison, one of the three judges who then composed the highest court of the great state of Pennsylvania, in an official judicial opinion, denied the existence of the power asserted by Marshall. And it is not without historical interest, as an evidence of the spirit of his time and a commentary upon the changed spirit of ours, that Judge Gibson's views did not impede his promotion to the chief-justiceship of his state.

IV

A change no less striking has taken place, since the power of the courts to annul legislation has been more freely exercised and has come to be generally recognized, in the attitude of our judges and in the opinions of our public men as regards the question: How far shall this power extend? Even after the

[1] *Cf.* Eakin *v.* Raub, 12 Sergeant and Rawle, 330, 343.

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decision in the Dred Scott case the existence of this power was not admitted by our leading statesmen except in a very limited sense. Lincoln denied its binding force in our modern sense, that is, as a rule of political conduct. And even those who admitted it as a rule of political conduct did not by any means, until very recent times, give it the broad scope which it now possesses. The older and more conservative point of view is clearly stated in the opinions of the very judges who asserted and used this power in its earlier stages of development.

Judge Iredell was one of the first members of the United States Supreme Court to claim this power. He advocated it even before the adoption of the federal Constitution; for he was leading counsel in the case of Bayard *v.* Singleton, noticed above, on the side which urged the right of the North Carolina state court to declare unconstitutional the state law at that time under review. As an associate justice of the United States Supreme Court he asserted this power before the decision in Marbury *v.* Madison, as we have seen in our examination of the case of Calder *v.* Bull.[1] We have also seen that he regarded this power as of an "awful nature," never to be resorted to except in a clear and urgent case. A further examination of his opinion will show that he considered the power to be limited to those cases in which the legislative enactment violated the very letter of an express prohibition of the Constitution. He emphatically repudiated, as we have seen, the theory that an act passed by Congress or by a state legislature, within the general scope of its constitutional power, could be pronounced to be void merely because it was deemed by the court to be contrary to the principles of natural justice. He based this conclusion on the assumption that each and every legislature was "possessed of an equal right of opinion" with any court as to what the principles of natural justice were. The hundred-odd years which have passed since Justice Iredell wrote this opinion have certainly wrought havoc with his antiquated ideas regarding the competence of legislatures and the functions of courts.

More than half a century later, at a time when the judicial power had firmly established itself and on the eve of its great

[1] *Cf. supra*, pp. 252, 253.

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coup in the Dred Scott case, the utterances of the courts regarding the limitations upon their authority remained the same. In 1853 the judges of the Pennsylvania supreme court wrote a series of notable opinions on this subject, in the case of Sharpless *v.* The Mayor.[1] The leading opinion was written by Chief Justice Jeremiah S. Black, one of the greatest constitutional lawyers of his generation, and soon afterwards successively attorney-general and secretary of state of the United States. The decision rendered in this case and the opinions upon which it is based are very interesting reading. They give much food for thought to the constitutional lawyer of to-day and to the student of our existing political institutions. Among the points decided in that case are the following:

In determining whether an act of the legislature is constitutional or or not, we must look to the body of the constitution itself for reasons. The general principles of justice, liberty and right, not contained or expressed in that instrument, are no proper elements of a judicial decision upon it.

If such act be within the general grant of legislative power, that is, if it be in its character and essence a law, and if it be not forbidden, expressly or impliedly, either by the state or federal constitution, it is valid.

To make it void, it must be clearly not an exercise of legislative authority, or else be forbidden so plainly, as to leave the case free from all doubt.

In their opinions the judges specifically state that by "forbidden expressly or impliedly" they mean just what they say: that there must be something in the Constitution, state or federal, which shows plainly, so as to leave no room for any doubt, that the Constitution intends to forbid just such a law as that under consideration, and that such general prohibitions as that "no person shall be deprived of life, liberty or property without due process of law" do not furnish a sufficient basis for declaring a legislative act unconstitutional, unless, indeed, the act be such as cannot be properly called a law or an act of legislation at all. Chief Justice Black said, in his opinion:

[1] 21 Pennsylvania State Reports, 147.

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We are urged to hold that a law, though not prohibited, is void if it violates the spirit of our institutions, or impairs any of those rights which it is the object of a free government to protect, and to declare it unconstitutional if it be wrong and unjust. But we cannot do this. . . . I am thoroughly convinced that the words of the constitution furnish the only test to determine the validity of a statute, and that all arguments based on general principles outside of the constitution must be addressed to the people, and not to us. A proposition which results so plainly as this does, from the reason of the thing, can scarcely need the aid of authority. . . . But, if the doctrine I am denying could be allowed to prevail, it would decide this case in favor of the plaintiffs without looking into the constitution at all; for it must be admitted that such measures cannot be sustained on principles of moral justice or propriety. . . . There is another rule which must govern us in cases like this; namely, that we can declare an act of Assembly void only when it violates the constitution clearly, palpably, plainly, and in such manner as to leave no doubt or hesitation in our minds.

And Mr. Justice Knox, in a concurring opinion, said:

The presumption is that the legislature has judged correctly of its own constitutional power, and the contrary must be clearly demonstrated before a coördinate branch of the government can be called upon to interfere between the people and their immediate representatives.

In ascertaining whether there has been this clear usurpation by the law-making power, I agree with the Chief Justice and Mr. Justice Woodward, that the tests to be applied are: 1. Is the act in the nature of a legislative power? 2. Does the constitution expressly, or by necessary implication, forbid the exercise of such a power? . . .

I am aware that under this rule acts may be passed which will, in the minds of many persons, be contrary to natural justice, and subversive of the just rights of the people. The remedy is to be found in further constitutional restrictions upon legislation, not in restraints imposed by the judiciary. The limit of the power of the people's representatives should be written upon the pages of the constitution, rather than remain in the breasts of our judges.

There is great danger in recognizing the existence of a power in the judiciary to annul legislative action, without some fixed rule by which such power is to be measured. Our opinions are so diversified and varied, that what to one mind may seem clearly right and proper, to another will appear to be fraught with imminent danger. If we have

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not a certain standard by which to test the constitutionality of legislative enactments, if each judge is to be governed by his own convictions of what is right or otherwise, I fear that restraints upon judicial, rather than upon legislative action, will be demanded by the people, ever jealous of the accumulation of power in the hands of a few.

And only a generation ago Justice Clifford of the United States Supreme Court said:

> Courts cannot nullify an act of the state legislature on the vague ground that they think it opposed to a general latent spirit supposed to pervade or underlie the Constitution, where neither the terms nor the implications of the instrument disclose any such restriction. *Such a power is denied to the courts, because to concede it would be to make the courts sovereign over both the constitution and the people, and convert the government into a judicial despotism.*[1]

As a corollary to the principle mentioned by Judge Knox, that there must be some fixed rule by which the power of the courts to annul legislative action may be measured and by which the constitutionality of legislative enactments may be tested, and in order to prevent our government from becoming what Mr. Justice Clifford warned us it might become—a "judicial despotism"—the courts have, until very recently, adhered to the well defined and clearly expressed rule of interpretation, that every inquiry into the constitutionality of a legislative enactment must be strictly limited to the question whether the legislature enacting it had power to legislate at all in the premises. Once such power was found to exist, the manner of its exercise could not be inquired into. No law could be declared unconstitutional on the ground that it was an unwise, inexpedient or improper use of a recognized power. The courts distinctly disclaimed any power or right to protect the people against an abuse of power by the legislature in matters on which it admittedly had power to legislate. Each legislature, accordingly, was left absolutely free to use, according to its own best judgment, those powers at least which by the court's own admission were granted or left to it by the Constitution. The

[1] Loan Association *v.* Topeka (1874), 20 Wallace, 655, 669.

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power of taxation, for instance, being admittedly reposed in the legislature, no court could interfere with its exercise, no matter how unwise, improvident or even dishonest its use might be deemed. The same was held to be true of the power delegated to Congress to regulate commerce with foreign nations. This power was held to be unlimited; it could be used even to the extent of completely forbidding commerce, as was actually done by the Embargo Act.

This rule was laid down by Chief Justice Marshall, who declared that "the interest, wisdom and justice of the representative body furnished the only security in a large class of cases not regulated by any constitutional provision." It has been reiterated by the Supreme Court of the United States on innumerable occasions. In the famous case of Munn *v.* Illinois,[1] decided in 1876, the Supreme Court said:

> We know that this is a power which may be abused; but that is no argument against its existence. For protection against abuses by legislation the people must resort to the polls, not to the courts. . . . For us the question is one of power, not of expediency. . . . Of the propriety of legislative interference within the scope of legislative power, the legislature is the exclusive judge.

This rule was absolutely necessary in order to prevent the judiciary from exercising legislative functions, thereby converting our government into a "judicial despotism."

V

Turning now from a study of the past to a consideration of the present, we must be appalled by the enormous change which has taken place in the distribution of powers in our government, not only from the time when the men of Massachusetts, Virginia and Maryland, guided by Montesquieu and English precedent, first formed our government, but also from those later days when our judges, under the able leadership of John Marshall, succeeded in establishing their position as guardians of the Constitution.

Instead of "walking in the footsteps" of either the founders

[1] 94 U. S. 113.

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of our government or the earlier judicial interpreters of our Constitution, we have now abandoned all restraints upon the judicial power. We have thrown to the winds all those great limitations, embodied in principles and rules of interpretation, which the earlier judges imposed upon their own power—a power which they deemed necessary for our orderly development, but the danger of which, when not properly limited, they clearly foresaw. One cannot read the latest decisions of our courts, either state or federal, without being forced to admit that they have usurped supreme legislative power, and that we have reached the condition of "judicial despotism" which Justice Clifford feared. Benevolent this depotism may be, or otherwise: that depends on the individuals who wield the power. Its benevolence is also largely a matter of opinion, depending on a variety of considerations, some moral and some material. As is well known, it makes a great difference whose ox is gored. But whatever difference of opinion there may be as to the spirit in which this power is exercised, it must be admitted by all candid students that the power itself spells despotism. The essence of despotism is the right of a few to make the laws or to control their making, without being responsible to the people. This condition is admitted by many able and learned jurists. They seldom employ the harsh term which I have borrowed from Justice Clifford; but depotism retains its sting no matter what it be called.

The first restraint to go by the board was the principle that this power was of an "awful nature," as Justice Iredell expressed it, an extraordinary power to be used only on extraordinary occasions for extraordinary purposes. It has become an ordinary power, used by our courts without hesitation as one of their regular functions. It is well within the truth to say that our federal and state courts now annul in one year more laws than they annulled during the entire first half of our national existence. The power is now used by every petty magistrate, and we are so accustomed to its every-day use that to speak of its "awful nature" seems like a bad joke.

The next restraint to be thrown off was the principle that a law cannot be declared unconstitutional unless it contravenes

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some special provision of the Constitution applicable to the subject, expressly stated in the Constitution or contained in it "by necessary implication," and that neither the general protection accorded to life, liberty and property nor the so-called "spirit of our institutions" gives sufficient cause for such annulment. Most of the important decisions declaring legislation unconstitutional are now rendered in violation of this principle. The chief grounds for the annulment of legislation in recent years have been the modern doctrines of "due process of law" and of "liberty of contract." According to the earlier view, neither of these doctrines would have justified the courts in assuming the control over legislation which they now exercise.

When the phrase "due process of law" was first used in this country, as part of the usual bill of rights in our state constitutions, from which it was subsequently taken over into our federal Constitution, this phrase had a well known and clearly defined legal meaning, which was the same as its literal meaning, namely, that of a procedure under general law, with proper trial or hearing. And it was in this sense that the phrase was used until comparatively recent times. But now it has acquired an entirely different meaning. As it is now used by our courts, when they declare legislation unconstitutional for contravening it, it means substantially the same thing that was meant by "natural justice," "principles of liberty and justice" and similar expressions in the earlier days of our constitutional history. Denial of "due process of law" is now discoverable in any law that requires or permits something to be done which the judges deem unjust or not in accord with the "free spirit of our institutions."

The doctrine of "liberty of contract," when used as a test of the constitutionality of legislation, is a still more glaring violation of the older rule. The federal Constitution nowhere mentions any such "liberty." It is claimed, however, by our judges (in modern decisions, of course), that this is part of the liberty guaranteed in the phrase contained, in one form or another, in all our constitutions, that "no person shall be deprived of his life, liberty or property without due process of law." Aside from the question of the meaning of "due process of law," which has just been considered, there is an additional difficulty with this

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particular "liberty," namely, that it was entirely unknown and undreamed of at the time we borrowed our "life, liberty and property" phrases from English constitutional law. It is therefore evident that this particular "liberty" was not originally contained in our constitutions. And in fact no such "liberty" was asserted until recent years. When did this "liberty" get into the Constitution? Evidently when we infused into the old words the new "spirit" of extreme individualism. And now we declare legislation unconstitutional on the ground that it is repugnant to this "spirit," and we call this "walking in the footsteps" of our forefathers!

The rule that the violation of the Constitution must be "clear, palpable, and free from all doubt" had to disappear with the other restraining rules when the express provisions of the Constitution were disregarded as a test of constitutionality of legislation and the vague "spirit of our institutions" was substituted therefor. The "spirit of the Constitution," the "spirit of our institutions" and the "principles of our government," which are now used as criteria of constitutionality, are in themselves empty phrases, into which not only each generation but each individual puts a different content, according to his own philosophical, political and social principles. What Justice Iredell said of "the principles of natural justice" is equally true of these newer principles: "The ablest and the purest men have differed on the subject." In this realm nothing can be said to be "free from doubt." Uniformity of opinion, except among close political associates and kindred philosophical spirits, is here extremely unlikely. And so we have lived to see the power which was originally supposed to be used only in cases "clear, palpable, and free from all doubt," used almost regularly by divided courts, often by bare majorities. And the uninitiated wonder: how is it that a provision, of which one judge emphatically asserts that he is able to find no trace whatever in the Constitution, is asserted by another, and with equal emphasis, to be clearly and plainly written therein?

The reading of a few important recent decisions, such as Lochner *v.* New York,[1] Adair *v.* United States,[2] People *v.*

[1] 198 U. S. 45 and 177 N. Y. 145. [2] 208 U. S. 161.

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Williams[1] and Ives *v.* South Buffalo Railway Company,[2] will sufficiently illustrate the points just made.

These same cases will also show that we have very effectually disposed of the last safeguard against the establishment of a judicial veto upon any and all acts of our legislative assemblies by discarding the rule that the courts must limit their inquiry to the question of the existence of the power which the legislature has undertaken to exercise, and that where the power exists its exercise is beyond the judicial sphere of influence. The courts now openly review the use made by the legislature of its conceded powers, thus arrogating to themselves a distinctly legislative function.

The result of all these changes may be summed up in a sentence. There are now no such "plain and simple" rules of interpretation as Judge Lurton claims; on the contrary, there are now practically no rules at all. Each case is supposed to stand "on its own merits," which, translated into ordinary English, simply means that each law is declared "constitutional" or "unconstitutional" according to the opinion the judges entertain as to its wisdom. This is another reason for the fact that almost all important constitutional cases are now decided by divided courts. Since there are no longer any set rules by which the judges can be guided, since they are left to determine the propriety and wisdom of laws according to the canons of politics and statemanship, they naturally exhibit those differences of opinion which we expect to find in legislative bodies.

This leads our Supreme Court as well as our other courts, into the position—anomalous and absurd for a court, though perfectly proper for a legislature—of deciding in different ways cases similar in principle. Thus in the case of Holden *v.* Hardy[3] the Supreme Court decided, by a vote of six to three, that a law limiting the hours of labor in mines was constitutional; but in Lochner *v.* New York[4] it decided, by a vote of five to four, that a law limiting the hours of labor in bakeries was unconstitutional. In principle the two cases are of course identical.

[1] 189 N. Y. 131.
[2] New York *Law Journal*, April 3, 4, 1911.
[3] 169 U. S. 366.
[4] 198 U. S. 45.

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Under the old rules of interpretation, which limited judicial inquiry to the matter of legislative competence, these two cases must have been decided in the same way. Either both laws were constitutional or they were both unconstitutional. In the earlier case, Holden *v.* Hardy, the Supreme Court decided that the state legislature had the power to pass a law limiting the hours of work in any industry when it—the legislature—came to the conclusion that longer hours would endanger the health of those employed in that industry. It followed as an irresistible conclusion that the bakery law was constitutional, the legislature enacting it having come to the conclusion that it was necessary for the protection of the health of those working in bakeries. The decision in Lochner *v.* New York, declaring that law unconstitutional, startled the legal profession and evoked vigorous protest from many constitutional lawyers. They could not understand it. They accused the Supreme Court of inconsistency. But the truth is that the court had discarded the old rules of constitutional interpretation and had adopted an entirely different theory. An examination of the dissenting opinion in that case, when it was before the New York Court of Appeals, and of the prevailing opinion in the United States Supreme Court, clearly shows this shifting of ground. Under the new rule of interpretation, it is no longer a question whether the legislature has the power to limit the hours of labor, when it determines that such a limitation is necessary for the health of those engaged in a particular industry; the question is whether that power has been wisely used. The power of the legislature is conceded, but its discretion is reviewed and is determined to have been improperly exercised. The legislature has found that work in a bakery beyond a certain number of hours is dangerous to health. But, says the court, we don't consider it so. And it was their judgment on the matter of the healthfulness of work in a bakery, not their judgment on the constitutional power of the legislature, that led five out of the nine judges to declare the law unconstitutional.

We are not now concerned with the question whether their conclusion was correct or erroneous. What concerns us is the fact that the court assumed the distinctively legislative function

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of deciding whether circumstances existed which required remedial legislation. This position is opposed to that which the court took in Munn *v.* Illinois.[1] Even in that comparatively late case the Supreme Court still held that such an inquiry was part of the functions of the legislature, and none of the court's business. It said: "For our purposes we must assume that if a state of facts could exist that would justify such legislation, it actually did exist when the statute under consideration was passed." In other words: if the legislature has the power to limit the hours of labor when the health of the employees demands it, the court must presume that the health of the employees in the particular industry which the legislature has undertaken so to regulate does in fact demand such a limitation of hours. Neither Judge Lurton, nor anybody else, will contend that if this rule had been followed in Lochner *v.* New York the bakery law would have been declared unconstitutional. It was declared unconstitutional because the rule still recognized in Munn *v.* Illinois was repudiated.

Another glaring instance of the open assumption of legislative discretion by the judiciary is furnished by the recent decision of the United States Supreme Court in the case of Muller *v.* Oregon.[2] In that case the Oregon statute under consideration limited the hours of work for women in "mechanical establishments, factories and laundries," to ten hours a day. This law was declared constitutional "as to laundries." The Supreme Court conceded the power of the state legislature to limit the hours of work for women, on the ground that "as healthy mothers are necessary for healthy offspring" the health of women is a matter of special concern to the state. And yet the court limited its approval of the exercise of that power to the case of laundries, reserving to itself the right to declare the law unconstitutional as to "mechanical establishments" and "factories" if it should conclude on future investigation that the state legislature had made an unwise use of its conceded powers as regards such establishments.

Approval of the decision in Muller *v.* Oregon as a matter of

[1] *Cf. supra*, p. 263.

[2] 208 U. S. 412.

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legislative policy, because of its effect upon the condition of the working class of this country, should not blind us to its significance as regards the distribution of political power in our governmental system. In the latter respect it openly, I may say almost defiantly, maintains the position that to the judiciary belongs the supreme control of all legislation and that it means to use it.

To say, in the face of these decisions and the many more that could be cited but for lack of space, that our courts do not exercise any legislative power, seems like adding insult to injury. And it is certainly a strange commentary on Judge Lurton's declaration, that the judicial power insures to us "a government of laws and not a government of men," that within three months after the publication of these words the New York court of appeals rendered a decision[1] which led the editors of two important magazines to the doleful conclusion that nothing can help us—not even an amendment to the Constitution—except the election to the judiciary of *proper men*, not men learned in the law and in the Constitution, but men with a knowledge of life and plenty of common sense.[2] These editors meekly accept the political situation created by the latest phase of the development of the judicial power and merely suggest a remedy for our social and economic ills on the basis of that political situation. But the great question before the people of the United States is: Shall we permit this political situation to become firmly and irrevocably established? Shall we permit this great revolution in our political institutions to take place undisputed? And the question before our leaders of thought is: Shall we permit this revolution to take place without even calling the attention of the people of the United States to its momentous character?

L. B. BOUDIN.

NEW YORK CITY.

[1] Ives *v.* South Buffalo Railway Company (New York *Law Journal*, April 3, 4, 1911), declaring unconstitutional the Workmen's Compensation Act.

[2] "Economics, Philosophy and Morals *v.* the Court of Appeals"; *The Survey*, April 8, 1911, vol. xxvi, pp. 77–80. "The Judge and the People"; *The Outlook*, April 15, 1911, vol. xcvii, pp. 809, 810.

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THE APPORTIONMENT OF STATE TAXES IN OREGON

THE majority of American commonwealths still rely upon the general property tax as the chief source of state revenue. Moreover, the state tax levy is usually based on assessments made by local officials, and the county or township pays a certain rate on its property valuations. As every student of finance recognizes, this arrangement encourages underassessments and gives rise to inequalities as between minor subdivisions. Two remedies have been frequently proposed for the evils indicated. It is recommended, in the first place, that separate sources be assigned to state and local governments; and it has been suggested that, while the latter may retain the general property tax with material modifications, the state shall derive its revenues mainly from corporation, inheritance, license, franchise taxes *etc.* Where such separation of sources is rendered difficult by the paucity of yield from business and inheritance taxes, so that both state and local governments are still forced to depend on the same taxable objects, it is sometimes suggested that the state levy be made independently of local assessments, and that some other basis of apportionment than current property valuations be chosen. It is with an experiment of the latter type that this paper deals.

Oregon was from the outset exposed to the evils of underassessment, which during the decade 1890–1900 developed in very pronounced form. The law of 1854 provided for the assessment of both land and personal property at their "true cash value." No attempt was made, however, to define this term, its interpretation being left for the most part to the assessor and the taxpayer. The oath of the property owner was relied on to secure the substantial correctness of his estimates. The usual motives that lead to underassessments were operative under this system. The office of assessor was elective; and that official was prone to purchase his reëlection by obtaining for his con-

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stituents the largest measure of exemption from state taxes. This was a safe undertaking and easy of accomplishment, since no penalty was prescribed for failure to comply with the law, and state taxes were levied at a certain rate per cent on valuations fixed by county assessors. These local officials were, moreover, subject to extraordinary pressure from the taxpayers. Since the country was new and costly improvements were lacking, land constituted the chief item of assessment and freeholders habitually formed a low estimate of its value. Much of the land had but lately passed by patent from the national government to the settlers, and landowners insisted on a valuation very close to the actual cost of filing and proving up.

These low valuations presented a serious problem, since the levy of state taxes had been left to the legislature and this body had decided on a fixed rate for a term of years. It was soon found that the expenses of the state were increasing out of all proportion to the assessed valuation of property. Moreover, after 1863 the laws had permitted the taxpayer to deduct a debt of any kind from the value of real estate and personal property. While tangible property was commonly assessed at one-third of its true worth, debts were rated at full face value. Through a combination of these two practices a dollar of indebtedness (seldom assessed as a credit) would wipe out three dollars' worth of assessable property. Then, too, the man who could show liabilities equal to one-third of his property might enjoy exemption, while his less favored neighbor, who owned less but had no debts to use as offsets, was subject to disproportionate burdens. Not only were assessments unduly low; they were also lacking in uniformity. As early as 1870 the secretary of state called attention to the unequal shares of state taxes borne by counties of approximately the same wealth and natural resources. To meet these difficulties, it was proposed, at this early date, either to substitute for the *per diem* compensation of the assessor a salary based on a percentage of the amount assessed, or to create a state board of equalization with power to review and correct the work of county assessors.

To the first of these proposals the people did not take kindly: the assessment of their property on commission seemed to be a

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remedy which in some cases might prove a trifle too effective. The office of assessor was of course elective, and its occupant was answerable to popular opinion; but that official might choose, under the proposed arrangement, to earn a competence in one term and live in retirement for the rest of his life. Furthermore, the new plan, even though it should operate to increase assessed values as a whole, would not necessarily equalize assessments of different counties. Some assessors would be more susceptible to the motive of self-interest than others.

The legislature chose what promised to be the lesser of two evils: it created a state board of equalization, consisting of three members elected by a joint convention of the two houses of the legislature. Its powers and duties were twofold. In the first place, it might report to the district attorney, with instructions to prosecute, any failure of county assessors to comply with the law. In a word, the board was to constitute a sort of grand jury for the indictment of delinquent assessors. But since the statute had failed to make clear what constituted a violation of the law and had neglected to prescribe a penalty, the activity of the board in this direction was barren of any important results. In the second place, the board had power to make such changes in total assessments of counties as would make them "equal and uniform" by adding to or deducting from the local valuations of taxable property. The law, however, forbade any change which would increase the total assessments of the state by more than one per cent. Furthermore, the board was authorized to interfere only in behalf of a county which considered its valuation relatively high as compared with that of other counties. It followed that the intervention of the board, although it might tend to promote equity between counties, operated only to reduce assessments still further. In 1874 the legislature abolished the machinery for equalization, and for seventeen years it failed to provide a substitute.

From this time on the evils of low and unequal assessments were cumulative, until temporary relief was afforded by a new board, created under an act of 1891. The report of the state tax commission of 1886 contains what is perhaps the best analysis of the defects of the fiscal system as it existed at that

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time. In the opinion of this commission, the greatest evils of the existing system grew out of the persistent practice of undervaluation. The commission ventured the further opinion that these evils would never be eradicated until some new method was devised for raising state revenues, to take the place of a mill tax on valuations fixed by county assessors.[1]

After this time there was a growing sentiment in favor of abandoning the old method of assessing state taxes, with a great deal of indecision as to what the substitute should be. Governor Pennoyer, in his message of 1891, expressed the belief that state expenses might be met by a poll tax of two dollars, a graduated income tax on all incomes above $1000 and a tax on the gross receipts of express, telegraph, telephone and insurance companies. Before an income tax for state purposes could be made equitable, however, the whole system of property taxation must be overhauled; and the legislators were opposed to sweeping changes. The chief objection to the corporation tax was that the rate would have to be unduly high to yield the necessary income; and, since the earnings of the corporations in question were subject to yearly fluctuation, it would be difficult to forecast the revenues from these sources. As a consequence the state treasury would be cumbered with a surplus or embarrassed by a deficit.[2]

No new remedy could find favor until a final trial of equalization by a state board had been made; and a board with somewhat amplified powers was created by an act of 1891. Upon organizing, the board sought to prove its usefulness by raising total assessments from $127,693,167 to $151,700,246. In so doing, however, it exceeded its authority in two directions. The law creating the board had recognized for purposes of assessment but two classes of real estate: town and city property and other real estate. The board assumed power to adopt an elab-

[1] Report of Committee on Assessment and Taxation, 1886, p. 7.

[2] Oregon has since adopted an inheritance tax (1903), a general license tax on corporations (1903) and a tax on the gross receipts of sleeping car, refrigerator car, express, telephone and telegraph companies (1904). The yield from these sources, however, is moderate, and the state is still largely dependent on the general property tax.

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orate classification of real property and increased the valuations of particular classes in different degrees. The court held that the board had no right to create classifications unknown to the law and to alter the valuation of one class without reference to the other.[1] The board was further crippled by the failure of county assessors to make returns in due season. The statute laid down no positive requirement and failed to prescribe a penalty, so the assessors acted according to their own convenience. The state board was required to meet on the first Tuesday in December and complete its work in thirty days. Nothing could be done until county rolls were all in; and consequently the board commonly adjourned without making any corrections, however obvious the need might be. In spite of its limitations, the board managed to worry along for seven years or so, when it was abolished by an act of 1898. The legislature provided a less expensive board, composed of the governor, the secretary of state and the treasurer; but the executive vetoed the bill on the ground that the new commission would be merely the "old specter in different robes."

The conviction now gained ground that there was no virtue in state boards of equalization. The situation, however, was steadily growing worse, and some remedy was demanded. Aggregate assessments of the state had declined from $168,000,000 in 1893 to $118,000,000 in 1900. There was also a striking lack of uniformity in the estimates of similar property by different assessors. Tillable lands of nearly the same quality were rated from an average of $17.69 in Yamhill county to an average of $10.24 in Lane county. Railroad bed was assessed at $4503.60 a mile in Malheur county and at $952.38 in Lincoln county. Polk county horses received an average valuation of $32.20, while in Harney they were assessed at $6.29. The "true cash value" of cattle in Morrow county was $16.01 per head, but when they were driven over into Wheeler or Crook county they were worth only $10. While the assessor of Morrow county was rating the average porker at $3.28, his contemporary in the neighboring county of Sherman placed

[1] Oregon and California Railroad Company *v.* Croisan, 22 Oregon, 393.

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the value at $1.48. Secretary Dunbar said, in his report of 1900:

> The summaries of the assessment rolls for 1900, so far as received, show that many counties are yet apparently engaged in "getting even" and have this year reduced their valuations from ten to twenty-five per cent, and this course, if persisted in, will eventually result in demoralizing our whole system of assessment and taxation and make the same a farce and travesty on justice.[1]

Governor Geer in his message of 1901 recommended as a remedy, or at any rate as a check to the further progress of the evil, a system of assessing state taxes against the counties in a lump sum instead of at a rate per cent on property valuations. No specific basis of apportionment was proposed; the governor suggested merely that each county might be required to pay "in proportion to its wealth or population." A plan of this sort, he thought, would at once and effectually destroy the incentive to undervaluation, would remove the annoyance and expense of collecting delinquent state taxes and would dispense with the necessity for a state board of equalization.[2]

The governor's recommendation was referred to the Senate committee on assessment and taxation, of which Mr. R. A. Booth was chairman, and a measure was formulated providing for a levy of state taxes independently of local assessments. This measure, which was known as the Booth bill, became a law on February 27, 1901.[3] Each county clerk was required to furnish annually to the secretary of state a concise tabulated statement of the expenses of the county for the preceding year, not including expenditures on roads and bridges. In January, 1905, and every five years thereafter, the state officials were to compute the total expenses in the several counties for the five preceding years, average them and determine the ratio between such average annual expenses of each particular county and the sum total of county expenditures throughout the state. This ratio was to represent the percentage of state revenues to

[1] Report of Secretary of State, 1900, p. 40.

[2] For the text of the governor's message see *Oregonian*, January 16, 1901.

[3] Session Laws, 1901, pp. 175–178.

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be contributed by each county. When the necessary statistics had been collected, the state taxes were to be apportioned according to the average annual expenditures of the several counties, excepting outlays for roads and bridges, as indicated above.

By subsequent acts it was provided that other outlays besides those made for roads and bridges should be deducted from expenditures. The tendency of these amendments was to leave out of account investments and extraordinary expenditures, so that current expenses only should form the basis of apportionment.[1]

Until the first apportionment on the basis of current expenses could be made, in 1905, the original act (1901) provided that state taxes were to be divided among the counties according to definite percentages set down in the law itself. These percentages were based on the average assessments of the several counties for the five years prior to the passage of the act.[2] Under this arrangement, apportionment of state taxes was to be made

[1] The first of these amendments was made by act of February 24, 1903. Baker county had shortly before annexed a portion of Union county known as the "Panhandle" and had assumed a proportionate share of the debt of the county from which the annexed territory was taken. Baker county had also incurred considerable expense in obtaining records relating to the "Panhandle" district. By the act of 1903, these extraordinary expenditures were excepted from the list to be filed by the county clerk. This act further provided that the amount expended in "reducing, discharging or paying interest on an existing debt" should not be reckoned as a part of county expenses under the terms of the original act of 1901. Session Laws, 1903, pp. 303, 304. By an act passed February 28, 1907, expenditures for the erection of court houses and on account of pestilence and epidemics were also excepted. Session Laws, 1907, p. 454.

[2] The percentages of state taxes assigned to each county for the five-year period was as follows:

Baker	.0195	Harney	.0160	Multnomah	.3123
Benton	.0202	Jackson	.0314	Polk	.0307
Clackamas	.0335	Josephine	.0090	Sherman	.0087
Clatsop	.0212	Klamath	.0115	Tillamook	.0087
Columbia	.0106	Lake	.0107	Umatilla	.0490
Coos	.0203	Lane	.0462	Union	.0262
Crook	.0130	Linn	.0526	Wallowa	.0073
Curry	.0040	Lincoln	.0055	Wasco	.0234
Douglas	.0345	Malheur	.0094	Washington	.0301
Gilliam	.0087	Marion	.0613	Wheeler	.0067
Grant	.0092	Morrow	.0095	Yamhill	.0391

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regardless of current assessments. By an act of February 24, 1903,[1] the date for introducing a levy on the basis of expenditure was postponed until January, 1910. The same act, for reasons noted above,[2] increased the percentage of state taxes to be borne by Baker county and correspondingly reduced that to be borne by Union county. By an amendment of February 28, 1907, the date at which the new system was to be put in operation was deferred until January, 1912, but the percentages assigned to the several counties were left unchanged. It appears accordingly that (with the slight modification made in 1903, which affected Baker and Union counties only) the distribution of state taxes fixed by the law of 1901, and based on the assessments of the preceding five years, was continued until 1912. During the whole history of the Booth law, which was declared unconstitutional in 1909, apportionment on the basis of expenditures, which promised to be the most interesting and permanent feature of the act, was never tried in actual practice.

For a period of seven years, however, state taxes were assessed on the counties according to predetermined ratios. This plan was expected to remove the motive to underassessment and to permit valuations to rise to a cash basis. The local assessor, however, found it more difficult to raise his figures than it had been to lower them. To increase them would have required a complete revision of the tax rolls, and the assessor and his deputies are prone to follow the lines of least resistance and to copy the old rolls as far as possible. Furthermore, it is hard to convince the average taxpayer that higher assessments do not mean more taxes. Some understand well enough that if all values are increased in the same proportion the rate will be correspondingly lower, but they still cherish the suspicion that the increase will not be general. Others favor low assessments to check extravagance on the part of county officials, since lavish expenditures, coupled with undervaluation of taxable property, would necessitate a rate so high as to seem unjust and extortionate. At any rate, there was at first no marked increase in assessed values. The new arrangement, however, seems to have checked further

[1] Session Laws, 1903, pp. 303, 304.

[2] *Cf. supra*, p. 277, note 1.

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decline in the figures. Between the years 1893 and 1900 the assessed value of property in the state fell from $168,088,905 to $117,804,874. From this minimum figure the valuations rose gradually to $188,058,281 in 1904 and $309,256,689 in 1905. This sharp increase for the year 1905 can be accounted for largely by a change in the policy of a few assessors, including the assessor of Multnomah county, where property valuations represent nearly three-eighths of the total for the state. Since 1905 the figures have risen more markedly.[1] How much of this increase is due to a stricter compliance with the assessment laws it is impossible to say. During this period the population and wealth of the state have been increasing very rapidly. In the price of real estate in particular, which constitutes nearly 74 per cent of the taxable property in the state, there has been a sharp advance. The state tax commission of 1906 prepared a table (reprinted on the next page) showing the estimated percentages of full cash value represented by assessments of the several counties. These figures were compiled by consultation and correspondence with the county officials, who were in a position to furnish trustworthy information on the subject.

It will be noticed that in several counties the percentages show a tendency to rise toward the end of the period, but the rise is by no means general. In at least thirteen counties the policy of the assessor seems not to have changed throughout the entire period; while in two counties, Baker and Umatilla, the assessments in 1905 represented a smaller fraction of cash value than in 1900. Only in Coos, Jackson, Multnomah, Wallowa and Washington counties did valuations appear to approach a cash basis. When state taxes were no longer based on county assessments, lack of uniformity was a matter of little concern until, in 1907, a law was passed providing for the assessment of special classes of corporate property by a state board of tax commissioners. Equity as between corporations that are purely local and assessed by county officials and those that fall under the jurisdiction of the state board necessitates

[1] Assessed values for recent years are as follows: 1906, $427,379,978; 1907, $581,558,918; 1908, $598,133,963; 1909, $694,727,631.

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PERCENTAGE OF MARKET VALUE REPRESENTED BY ASSESSMENTS, 1900–1905

COUNTY	1900	1901	1902	1903	1904	1905
Baker	33⅓	33⅓	33⅓	33⅓	25	20
Benton	40	50	65	65	60	50
Clackamas	30	35	35	65	65	70
Clatsop	33⅓	33⅓	33⅓	40	40	40
Columbia	33⅓	33⅓	33⅓	33⅓	33⅓	50
Coos	33⅓	33⅓	33⅓	33⅓	33⅓	90
Crook	50	50	50	50	50	50
Curry	33⅓	33⅓	33⅓	33⅓	33⅓	70
Douglas	25	25	25	25	25	25
Gilliam	40	40	40	40	50	50
Grant	50	50	50	50	50	50
Harney	50	50	50	50	50	50
Jackson	40	40	40	40	40	80
Josephine	25	25	25	33⅓	33⅓	66⅔
Klamath	50	50	50	50	50	65
Lake	50	50	50	50	50	50
Lane	50	50	50	50	50	50
Lincoln	40	40	40	40	40	40
Linn	50	50	50	50	50	50
Malheur	20	20	25	30	25	50
Marion	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓
Morrow	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓
Multnomah	40	40	40	40	40	100
Polk	40	40	40	40	40	40
Sherman	33⅓	33⅓	33⅓	33⅓	33⅓	33⅓
Tillamook	25	25	35	30	35	40
Umatilla	33⅓	30	25	33⅓	30	30
Union	25	25	25	25	25	33⅓
Wallowa	33⅓	33⅓	33⅓	33⅓	33⅓	90
Wasco	30	30	30	33⅓	33⅓	40
Washington	25	25	25	25	40	80
Wheeler	30	30	30	30	40	40
Yamhill	40	40	40	40	40	40

closer correspondence between figures of local assessors on the one hand and those of the state board on the other.

The ultimate object of the Booth law was to apportion state taxes on the basis of county expenditures, and opinions differ as to the expediency and justice of this plan. This arrangement was characterized by Professor F. G. Young[1] as "at best an arbitrary device"; but this is not admitted by the framers and defenders of the law. There is good reason, too, for believing that the expenditures of county government, or of any kind or grade of government, tend in the long run to equal the revenue which can be obtained. In any well managed fiscal

[1] *Oregonian*, January 13, 1903.

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system, average income and average expenditure for a period of years are practically identical. Apportionment of state taxes according to current expenses, then, may be defended as a sort of income tax on the counties. This seemed to be the contention of the commission of 1906, when they argued that the law

> fixed the amount of tax to be paid by each county in exact ratio with its capacity to expend for itself. . . . The income and expenses of the counties have a fixed relation to each other. Practically the apportionment is on the county's income as well as its expenses.[1]

Generally speaking, too, there is a substantial correspondence between county expenditures and the taxable property from which its income is derived. The commission of 1906 prepared a table[2] giving the apportionment of state taxes for 1905 on the basis of actual cash value of property (estimated from the assessment rolls) and compared these figures with a similar distribution of the state tax burden according to current expenses. An examination of this table reveals the fact that in the majority of cases the variations between the two sets of figures are almost negligible. In twenty-three out of thirty-three counties correspondence between the two was accurate even to the third decimal place. For thirteen counties the variation was less than one-half of one per cent. In the case of Multnomah county, where the difference was greatest, there was a discrepancy amounting to about two and one-half mills on the dollar of assessed valuation. This county, which contains the chief city of the state, with 210,000 inhabitants, presents the only case where apportionment according to county expenses would not work substantial justice. Multnomah county, it is true, contains extensive rural districts, but a large share of its population and wealth is concentrated within the city limits. Moreover, the municipal government of Portland assumes many functions which elsewhere would be attended to by the counties. Assignment of state taxes on the basis of county expenses, particularly if extraordinary expenditures and investments were excepted, would place Multnomah's share of state taxes too low.

[1] Report of Oregon State Tax Commission, 1906, p. 69. [2] *Ibia.* p. 70.

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One of the practical advantages frequently claimed for this system of apportionment is that it would promote economy in county affairs, since lavish expenditures for local purposes would subject the county to a disproportionate share of the state taxes.[1] Perhaps a better way of stating this argument is to say that a measure of this kind should furnish the taxpayer with a double motive for insisting on economical administration of county affairs, for any saving realized on the local budget would operate not only to lighten the burden of taxation for local purposes but also to reduce the rate for state purposes. The strength of this motive ought to be considerable, since in many communities the rate for state expenditures is very nearly as great as that for county expenditures.

It may indeed be questioned whether it is desirable to encourage stricter economy in all directions. The legislature, recognizing the need of better highways throughout the state, excepted county expenditures made for this purpose, lest the new system of apportionment should discourage this class of improvements. It was claimed, by critics of the Booth bill, that counties might seek to reduce current expenses by cutting the pay of local officials, and that salaries were already too low to attract first-rate men. County school superintendents in rural sections are frequently cited as examples of underpaid officials. This objection is of little weight, however, when it is remembered that, in Oregon, salaries of county officials are fixed by state law.

Although the ultimate rule of apportionment contemplated by the act met with few objections, the temporary device of assessing state taxes according to fixed percentages was severely criticized. It will be remembered that these percentages were based on average assessments for the five years previous to the passage of the act. Under this plan, whatever lack of uniformity had existed during this period was to be perpetuated for another five years. The objection was strongly stated by a writer in the *Oregon Statesman*.

[1] *Cf. Oregonian*, January 25, 1901; *Oregon Statesman*, January 26, 1901; Report of State Tax Commission, 1906, p. 70.

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The bill proposes to take the unequal assessments of the past five years—years when the systematic evasion of the law was most flagrant—and enact these unjust and unequal assessments into law and make them the basis for the demands on the several counties for state taxes. . . . The counties whose officials have been most successful in evading the law and defrauding the state for the last five years are now to be protected in that systematic evasion of the law for the next five years. The people ask relief from unequal taxation. The House answers by fastening on them for five years to come the very injustice of which they complain.[1]

Forcible as this objection seems, it is hard to see how the transition from the old to the new method of assessing state taxes could have been accomplished in any other way. Since statistics of county expenditures were lacking, the new system could not be put in operation until the necessary data had been collected. In the meantime some substitute device had to be adopted. Legislators were evidently convinced that the situation was growing steadily worse, and that the inequalities of the past five years were preferable to those which were likely to appear. Once the fixed ratio plan was adopted, it could not very well be abandoned. As we have already seen, some counties, after the passage of the Booth bill, began to raise their assessments toward the true market value, while others adhered to the old policy of underassessment or even discounted values still further. To abandon the fixed percentages and to base the state levy on current valuations would have been unfair to counties that had been bringing their assessment to a cash basis, relying on the permanency of the law.

The state tax commission of 1906 said in its report: "In our opinion the method of state apportionment to become operative in 1910 is calculated to eliminate all the evils of the general property tax except the problems of personal property taxation." If the date at which the new system was to go into operation had not been twice postponed; if this part of the law had gone into effect, as originally contemplated, in 1905; the inequalities, apparent or real, which caused the constitutional

[1] John P. Robertson in the *Oregon Statesman*, February 19, 1901.

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objection to be raised might have escaped notice. At the time the Booth bill was passed the constitutionality of the measure was questioned. It was argued, however, that, since county expenditures bear a fixed relation to the amount of taxable property, the constitutional requirement that taxes shall be levied at a uniform rate on property valuations was virtually observed.[1] The constitutional position of the temporary "fixed ratio" plan for assessing state taxes was even more questionable. It was suspected from the outset that it would prove to be unconstitutional if the question should be tested in the courts. Notwithstanding this, the general advantages of the scheme caused it to be continued by common consent. But for the action of Yamhill county in questioning the constitutionality of the law, the fixed ratio plan might have been tolerated until apportionment on the basis of county expenses had been put in operation.[2]

In May, 1908, Yamhill county brought suit against Harrison E. Foster, treasurer of the county, to enjoin him from paying over the amount of state taxes asssessed against the county for that year. The contention of the county was, in brief, as follows. The governor, secretary of the state and treasurer were bound by the state constitution to apportion state taxes among the counties in proportion to assessed value of property. On this basis Yamhill county would pay $23,167.03. These state officials, on the other hand, had proceeded to levy state taxes in accordance with the provisions of the law of 1907, which the plaintiff county alleged to be "arbitrary," and Yamhill county was charged with $44,965 or nearly double her just share. The plaintiff's allegations were correct, so far as the facts were concerned; but the explanation is that, while many counties, acting in accordance with the spirit of the new law, had raised their assessments considerably, the assessor of Yamhill county had continued to discount the value of taxable property at the old ratio. It would clearly be to the advantage of the county if it could force a return to the old system. It was probably true,

[1] *Oregonian*, January 25, 1901; *Oregon Statesman*, January 26, 1901.

[2] *Cf. Oregon Statesman*, January 27, 1909.

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however, that the county's share of state taxes was excessive, judged either by the estimated cash value of assessable property or according to the ratio of county expenditures.[1]

The decision in the lower court was in favor of the county, and an injunction was granted restraining the treasurer from paying over the sum assessed by the state. On appeal, the supreme court reversed the decision of the lower court so far as its practical consequences were concerned, but it affirmed the decision of the lower court that the Booth law was unconstitutional.[2] The ruling of the court was based mainly on the so-called uniformity clause[3] of the state constitution, which requires the legislative assembly to "provide by law a uniform and equal rate of assessment and taxation. . . ." This clause the court interpreted to mean that "the rate of taxation must be equal and uniform throughout the taxing districts, whether state or local"; and it held that an apportionment of taxes among the counties "in accordance with a fixed ratio . . . not based on assessed valuations for the current year but, as it appears from the act of 1901, . . . on the assessments of the several counties for the five years prior to 1901," was in conflict with this provision of the constitution, because it produced an unequal rate throughout the several counties.[4]

It had been urged, in defence of the law, that "the general scheme for assessing and collecting taxes in this state creates the relationship of debtor and creditor between county and state for the amount of state revenues apportioned," and that the county could not escape its just debts. The court, while admitting the force of this contention, nevertheless insisted that the obligation imposed and incurred was not in the nature of a contract obligation "but a liability imposed by the state in the exercise of its taxing power, which must be subject to constitutional limitations." The court was willing to concede that the

[1] According to the estimate of the tax commission in 1906 Yamhill county would have paid on cash valuation of property .027 per cent of state taxes. On the basis of county expenditures for five years prior to 1905 her share would have been .0265 per cent. The fixed percentage assigned to the county under the Booth bill was .0391.

[2] Yamhill County *v.* Foster, 53 Oregon, 124.

[3] Article ix, section 1.

[4] 53 Oregon, 130–132.

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new method of assessing state taxes might be "more equitable and just" than if it were made by a uniform rate on assessed values throughout the state, but insisted that if the constitution required apportionment to be made in a certain way its provisions must be respected.

One of the peculiar aspects of the decision was that the supreme court, while declaring the law unconstitutional, nevertheless held that Yamhill county could not secure relief from payment of the sum assessed against it under this unconstitutional law.[1] It was this aspect of the opinion of the court that at first misled the public with regard to the real significance of the decision.[2] When its full import was learned, it was perceived to upset the whole system of levying state taxes; and the legislature was compelled at once to provide a substitute. It was obvious that nothing short of a uniform rate on county assessments would meet the requirement of the constitution as interpreted by the court. The judges had declared that, if apportionment according to property valuations should prove to be "unequal and unjust because of the action of local assessors, provision should be made by law for an equalization of valuations as between the several counties for state purposes." Thus, while the court recognized that the "levying of a tax is a legislative and not a judicial function," it nevertheless recommended a return to a state board of equalization and indicated that this was the only solution of the problem that it would accept.

Acting on this recommendation, the legislature promptly passed the emergency act of February 2, 1909.[3] Under this law the governor, secretary of state and treasurer were consti-

[1] The court held, in brief, that the levying of a tax is a legislative and not a judicial function, and that the judiciary has no power to enjoin the collection of a tax merely because of its illegality or irregularity. Furthermore, the county court had treated the state levy as just, had made provision for its collection and had paid it over to the treasurer. He could not refuse to pass it on to the state treasurer; for a "public officer or agent of the state who received money for it can not refuse to pay it over on the ground that it was illegally exacted."

[2] The newspapers of the state failed to notice this important decision or made only casual mention of it. The Portland *Oregonian*, in its report of the case, said that the court had upheld the constitutionality of the act.

[3] Session Laws, 1909, p. 58.

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tuted a temporary board of equalization with powers to "adjust and equalize" the assessments of county officials "so that the same shall be as nearly uniform as possible." Counties were to pay in proportion to the "equalized value of taxable property." The new board was given large powers to administer oaths, to take testimony and to compel local officers to certify to any relevant fact. The work of this temporary board was confined to the levy of 1909.

By an act passed February 24, 1909,[1] similar powers are conferred on a permanent board, consisting of the state tax commissioners, the governor, the secretary of state and the treasurer. To insure assessments at or near the market value of property; each assessor is now required, in making his returns to the secretary of state, to take an oath that he has diligently assessed all property in the county "at the full cash value thereof." Failure to make or file a sworn statement or to comply with the law in other respects is declared to be a misdemeanor, and conviction works forfeiture of office.

This law was applied for the first time to the assessments of 1910. Several assessors promptly announced their intention of complying with the letter of the law, and it was said that they were "getting down" to a cash basis.[2] The total valuation of taxable property in the state for 1910 was $844,887,708, an increase of 21.6 per cent over the figures of the previous year. In the opinion of the state tax commission the assessments represented a nearer approach to market valuations and in some counties were practically on a cash basis.[3] In some instances, however, the same inequalities which preceded and, in a measure, occasioned the legislation of 1901 were apparent in the uncorrected returns of 1910. The state board, while leaving the total assessments unchanged, raised the valuations of Clatsop county 114 per cent and reduced those of Lincoln county 26 per cent. The average ratio of assessments to market values throughout the state was 71 per cent, but individual ratings ranged from 33 per cent in Clatsop to 96 per cent in Lincoln.

[1] Session Laws, 1909, p. 358.

[2] *Eugene Register*, July 1, 1910.

[3] Report of State Board of Tax Commissioners, 1911, p. 10.

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The election of 1910 made possible some radical changes in the fiscal system of the state.[1] At the request of the Grange Legislative Committee the legislature of 1909 submitted to the people two amendments to the constitution, abrogating the uniformity provisions and empowering the legislative assembly, or the people by initiative, to provide by law for a uniform rule of taxation "except on property specifically taxed," or to arrange for the levy and collection of taxes for state, county and municipal purposes upon different classes of property. These amendments, if adopted, would have made possible the revival of the Booth plan for apportioning state taxes or the adoption of a plan for separation of sources, as well as radical changes in the personal-property tax. Both amendments, however, were rejected at the polls. At the same time the people ratified an amendment formulated by leaders of the single-tax movement and endorsed by the Oregon State Federation of Labor as well as by the local trades council of Portland. This amendment swept away every constitutional limitation on the taxing power, but it provides that no act regulating taxation or exemption throughout the state shall become a law until it has been approved by the people at a regular election. Moreover the people of the several counties are empowered to regulate taxation and exemptions within their respective jurisdictions, subject only to such general laws as the people of the state may approve. This amendment reduces the power of the legislative assembly in matters of taxation to a mere initiative, but makes it possible for the people to adopt any sort of revenue measure. Subject to certain restrictions, it makes possible county option in taxation. Single-taxers have already announced their intention to submit at the next election some type of single-tax legislation, not only as a state-wide measure but also, where the single-tax sentiment seems to warrant the proposal, as a local act.

Opponents of the single-tax movement charge its leaders with unfair dealing, on the one hand in concealing the real purpose of the measure, on the other hand in making it more at-

[1] *Cf.* G. H. Haynes, "'People's Rule' in Oregon," POLITICAL SCIENCE QUARTERLY, vol. xxvi, pp. 53–56.

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tractive by the addition of a clause repealing the poll tax. It is claimed that the vote in favor of this radical measure does not reflect the opinion of the majority.[1] This opinion was evidently shared by many members of the last legislature. On recommendation of the state board of tax commissioners, the "Grange amendments" were resubmitted in slightly modified form. In the opinion of the board, the rejection of these amendments was "due entirely to the fact that their purpose and the wisdom of their enactment were not fully understood and appreciated." The legislature likewise proposed a third section, which, if adopted, will take the place of the "single tax" or "county option" amendment. It reads as follows: "No poll or head tax shall be levied or collected in Oregon. The Legislative Assembly shall not declare an emergency in any act regulating taxation or exemption." It will be noticed that this section contains the same attractive clause which is held responsible in part for the adoption of the amendment it seeks to displace.[2] At the same time the legislature provided for a committee to confer with the tax commissioners and to prepare laws relating to taxation and exemptions, which may be initiated and submitted for approval or rejection at the next regular election.

The adoption of the three proposed amendments would not only restore to the legislature its former control over tax laws but would ward off the danger of disorganized and perhaps conflicting local systems. At the same time the removal of certain outgrown restrictions on the taxing power would enable the legislature to adopt any approved device for apportioning state taxes and, when it is deemed desirable and practicable, to introduce a separation and assignment of independent sources.

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[1] The act was described on the official ballot as an "amendment providing for the people of each county to regulate taxation and exemptions within the county regardless of constitutional restrictions or state statutes and abolishing poll or head tax." It was carried by a majority of 2044.

[2] Report of State Board of Tax Commissioners, 1911, p. 27; Senate Joint Resolutions, nos. 8, 9 and 10.

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THE GOVERNMENT OF INDIA

THE most serious problem engaging the attention of British statesmen is probably the administration of the Indian empire. This problem, furthermore, is of such a character that perhaps no other political undertaking of modern times has attracted to a greater degree the notice of the civilized peoples of the earth. It was de Tocqueville who said that it was really the conquest and government of India that gave to Great Britain its place in the eyes of the world.

Much of Great Britain's foreign policy during the past century and a half has been shaped with a view to maintaining the integrity of British India. Herein is found a reason for its resolute stand against the French in India during the Seven Years' War; for Napoleon's defeat in Egypt, in 1798, by British forces; and for the wholesale purchase, in 1875, of Suez canal bonds from the extravagant khedive. Great Britain's Indian policy formed a not unimportant cause of the Crimean War; it has been the key to Anglo-Russian relations in Asia, down to the convention of 1907; and the Anglo-Japanese alliance of 1905 can be traced, indirectly at least, to concern for India. India still remains, as has been aptly said, the corner-stone of the British empire.

In the course of an address, at the Delhi durbar, in 1903, Lord Curzon, then governor-general of India, discussed the question of the British administration of India. "To have won such a dominion," he declared, "is a great achievement. To hold it by fair and righteous dealing is a greater; to weld it by prudent statesmanship into a single compact whole will be, and is, the greatest of all." Mr. Roosevelt, shortly before he relinquished the presidency of the United States, said: "The successful administration of the Indian empire by the English has been one of the most notable and most admirable achievements of the white race during the last two centuries."

Whatever may be the opinions held by individuals as to the justification and wisdom of British rule in India, all are agreed

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that Great Britain has had, and still has, on her hands a peculiarly serious and difficult undertaking in attempting to direct the destinies of 300,000,000 people, several thousands of miles distant from London. At the present time, India is attracting special notice because of the manifestations of seditious unrest among many of its inhabitants and because of the recent reforms which the British have introduced.

The government of this great dependency has been evolved gradually and with much labor. Before attempting to describe it as it is today, it seems desirable to outline briefly the form of government that prevailed prior to 1858, at which time India came under the direct rule of the British Crown.

Political history before 1858 [1]

The history of British India falls, as a leading authority on Indian affairs has observed, into three periods.[2] From the beginning of the seventeenth to the middle of the eighteenth century, the East India Company was a trading corporation exercising certain military powers. It existed on the sufferance of the native powers and in rivalry with the India companies of Holland and France. During the second period, approximately a century in duration, the British company secured and consolidated a considerable dominion, shared its sovereignty in increasing proportions with the Crown and gradually lost its mercantile privileges. The third and final period dates from the Mutiny of 1857, at which time the remaining powers of the East India Company were transferred to the Crown. A notable feature of the early history of British India is that the tide of conquest never turned against the company. After a province had once been taken under its direct administration the company was able to insure peace to its inhabitants. It followed from this circumstance that the building-up of the system of

[1] For the history of British India prior to 1858, the reader is referred to the following works: Sir G. Chesney, Indian Polity; Sir C. P. Ilbert, The Government of India; Sir W. Hunter, The Indian Empire; Sir John Strachey, India, Its Administration and Progress; The Imperial Gazetteer of India (1907 ed.), vol. iv; Sir A. C. Lyall, Rise of the British Dominion in India; and The Rulers of India Series.

[2] Sir C. P. Ilbert, Government of India. This volume has been characterized by President A. L. Lowell as "by far the best work on the public law of India."

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government proceeded almost without interruption from the time of the company's earliest conquests.

Prior to 1773, and while the East India Company was in full authority in India, the ultimate control of the Indian dependencies, comprising the appointment of the officials and the dictation of policy, lay with the Court of Directors and the General Court of Proprietors in London. During this period the affairs of the three principal settlements or "presidencies," as they were called, in Bengal, Madras and Bombay, were in each case administered by a president and a council composed of the senior civil servants of the company.[1] So long as the ostensible business to be conducted consisted of trading operations, this system served its purpose tolerably well. But the situation was entirely changed soon after the middle of the eighteenth century. By Clive's victory at Plassey, in 1757, and the grant to the company by the Mogul emperor, in 1765, of the fiscal government of Bengal, the company became a sovereign power and was forced to exercise the functions of government. The system of administration by unwieldy councils of merchants at the presidency towns became totally inadequate as soon as the company was called upon to rule an oriental empire. This fact, in conjunction with various other contributory causes, led to a special investigation into Indian affairs by the House of Commons and, shortly after, to legislation.[2] It was during the administration of Lord North that Parliament passed the regulating act of 1773 "for the better management of the affairs of the East India Company as well in India as in Europe." This act was the first statute distinctly recognizing the company as fulfilling other functions than those of trade.[3] It was the first step, moreover, in the transfer of the government of British India from the company to the Crown.

By this act the authority of the Courts of Proprietors and Directors was retained. In India, however, certain far-reaching changes were instituted. A governor-general and four councilors were nominated to administer the presidency of Fort

[1] Imperial Gazetteer of India, vol. iv, pp. 6, 7.

[2] Chesney, Indian Polity (3d ed.), pp. 36, 37.

[3] *Ibid.* p. 37.

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William (Bengal), and for the first time a supremacy over Madras and Bombay was accorded to that presidency.[1]

Although various restrictions were laid upon the governors of the subordinate provinces, the isolated situation of the three presidencies rendered the control theoretically exercised by the Bengal government practically ineffective. The stormy administration of Warren Hastings, the first governor-general, brought to light the defects in the system of government, as constituted by the act of 1773. Reforms were introduced by Pitt's India Act of 1784. It aimed principally to put into the hands of the ministry the power to control the proceedings of the company. Up to that time the British government had but indirect and unsatisfactory means of access to the records of the company's transactions. This act established a board of control, to be appointed by the Crown, with authority to direct all operations relating to the civil and military government and revenues of India. By the creation of this board the home government of India passed nominally from the company to the Crown.[2] In reality, however, the act introduced a dual system of government, under which the Court of Directors, although subordinate to the supreme authority of the Board of Control, retained large powers, including the management of trade, the exercise of patronage and the initiation of business. The board was to consist of not more than six privy councilors, and its membership was gradually reduced below this number. The powers of the board came to be virtually exercised by its president, who may be regarded as "the lineal precursor of the secretary of state for India."[3] With respect to the executive administration in India, the act of 1784 vested the control of each of the three presidencies in a governor and three councilors, including the commander-in-chief of the presidency army. At the same time, the authority of the governor-general in council (Bengal) over the other presidencies was somewhat extended. The system of government brought in by Pitt's India Act lasted, with certain minor modifications, until the abolition of the company in 1858.[4]

[1] Strachey, India, p. 45.

[2] Chesney, Indian Polity, p. 42.

[3] Imperial Gazetteer, vol. iv, p. 34.

[4] *Ibid.* pp. 15, 35.

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By the act of 1773 the charter of the company was to expire in twenty years, subject to renewal for another term of the same length. At each subsequent renewal of the charter the privileges of the company were curtailed, particularly in the matter of trade, until it was transformed from a commercial organization to a purely administrative body. The Charter Act of 1813 withdrew from the company its commercial monopoly, except with regard to tea and the China trade. Twenty years later, the Charter Act of 1833 deprived the company of its mercantile functions altogether, from which time, until 1858, the company was a governmental agency holding its Indian territories in trust for the Crown. The anomalous character of this system was recognized, and it was felt that a change was necessary. Accordingly the Charter Act of 1853, in renewing for the last time the sadly mutilated privileges of the company, decreed that, instead of being fixed for twenty years as on earlier occasions, they should exist only "until Parliament shall otherwise provide." Four years later occurred the Sepoy Mutiny, which precipitated the abolition of the company and the complete transfer of the government of the Indian dependency to the Crown. The Asiatic empire, of which the Crown at this time acquired full control, had been ruled for nearly one hundred years by a private company under the general supervision of the ministry in London; and the traditions formed during that period seem to have continued, even to the present time, to influence the methods of public administration in India.

Shortly before the Mutiny the government in India had been placed under the general control of a central authority.[1] The act of 1833 had vested the direction of the entire civil and military administration and the sole power of legislation in the governor-general in council. By this act the governor-general in council of Bengal became for the first time the governor-general in council of India, although he still retained the direct government of the Bengal presidency.[2] In 1854 a lieutenant-governor of Bengal was appointed. This put Bengal virtually on an equality with Madras and Bombay and liberated the

[1] Imperial Gazetteer, vol. iv, p. 16. [2] Strachey, India, p. 46.

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governor-general from the immediate administration of Bengal or any other particular portion of the country. Thus, by degrees, the governor-general in council came to be the supreme government authority in India, concerned with the general supervision of the various local governments in their administration of the provinces.[1]

The act of 1858 applied almost solely to the Indian administration as carried on in England: the government in India was conducted largely as before.[2] Even the changes effected in England were in form rather than in principle. The sovereign took the place of the company as the source of authority, and the powers of the Court of Directors and of the Board of Control were vested in a parliamentary secretary of state with a council. A reason is to be found herein for the continuity that has marked the conduct of the government of India during the past century and a half. No new political experiment had to be tried in 1858 when England undertook the direct control of the country. Profiting by the experience of the preceding century, the British wisely continued, in the main, to make use of the existing administrative machinery. The government of India today is the fruit of a slow but natural and uninterrupted evolution which had its beginnings in the days of the East India Company.

The essential provisions of the Government of India Act of 1858 are still in force, despite many changes that have been introduced by subsequent legislation.[3] In describing the existing system of administration, attention will be directed in the first place to the home government, or ultimate authority, after which an attempt will be made to outline the leading features of the government as found in India. This will be followed by a reference to the reforms recently introduced under Lord Morley's leadership. Further changes have been recommended in the recently published report of the Royal Commission upon Decentralization (1909), and certain of these will be mentioned.

[1] Chesney, Indian Polity, p. 116.
[2] Strachey, India, pp. 47, 48.
[3] *Ibid.* p. 66.

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The home government in England

Since 1858 British India has been administered under the direct authority of the sovereign, as already stated, and through the secretary of state for India. This minister is the constitutional adviser of the Crown on all matters pertaining to India. He is appointed like other British secretaries of state. He has inherited the authority and the duties which were formerly vested in the Board of Control and in the East India Company, and he possesses the power of giving orders to every officer in India, including the governor-general, and of directing all business relating to the Indian administration that is transacted in the United Kingdom.[1] Every official communication dispatched to India must be signed by him or, in his absence, by some other secretary of state; and every communication from India must be addressed to him. Many of these extensive powers and duties are exercised and discharged by the secretary of state alone, on his personal responsibility. Other acts can be performed by him only in consultation with his council; and for some of these, mainly relating to financial matters, the concurrence of a majority of the council is required.[2] The secretary of state may act without consulting his council in all matters where, by statute, he is not expressly required to act as "secretary of state in council." In accordance with constitutional practice, the secretary of state, as a minister of the Crown, is amenable to criticism in either house of Parliament; and since he is always a member of the cabinet, that body also is responsible for the conduct of his department.

The Council of India, as constituted by the act of 1858, consisted of fifteen members, who were to hold office during good behavior. Subsequent legislation has considerably amended the constitution of this council. At the present time, all the members are appointed by the secretary of state for a term of seven years, and in exceptional cases they may be reappointed for a further term of five years.[3] The number of members in

[1] Imperial Gazetteer, vol. iv, pp. 36, 37.

[2] *Ibid.* p. 37. Report of Royal Commission upon Decentralization (Cd. 4360), p. 7.

[3] Statesman's Year Book (1910), p. 116.

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the council is now limited to not less than ten nor more than fourteen. At the beginning of the year 1910, there were thirteen members, of whom two were distinguished native Indians.[1] The policy of appointing Indian gentlemen to seats in this council was first adopted by Lord Morley, as secretary of state for India, in 1907. At least nine members of the council must have served or resided in India for ten years and must not have left India more than five years previous to the date of appointment.[2] The object aimed at, with respect to the composition of the council, is to give to the secretary of state, who ordinarily is a man with little personal knowledge of the details of Indian administration, the help of a body of experts.

The powers of this council are less extensive than those enjoyed formerly by the Directors of the East India Company, The council has no initiative: it can give no opinion on questions, even though they may be universally discussed, until they are laid before it by the secretary of state.[3] Every official communication proposed to be sent to India (unless it falls under either of two reserved classes presently to be explained) and every order proposed to be made by the secretary of state relative to India must either be submitted to a meeting of the council or else must be placed in the council room, for seven days, for the perusal of members before being issued. Likewise, the council has a similar right to see every official communication received from India, except such as are marked "secret." In financial matters, as already mentioned, and in a few other less important cases, the secretary of state can take no action without the consent of a majority of his council.[4] The act of 1858 provided:

> The expenditure of the revenues of India, both in India and elsewhere, shall be subject to the control of the Secretary of State in Council, and no grant or appropriation of any part of such revenues, or of any other property coming into the possession of the Secretary of State

[1] Government Statement of Moral and Material Progress in India during the Year 1908–09, p. 1.

[2] Statesman's Year Book, 1910, p. 116. [3] Strachey, India, p. 67.

[4] Report of Royal Commission upon Decentralization (Cd. 4360), p. 7.

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in Council by virtue of this Act, shall be made without the concurrence of a majority of votes at a meeting of the Council.

The powers given to the council in controlling expenditure are not nearly so great, however, as they appear to be at first sight, since they can be exercised only in regard to the ordinary business of the administration.[1] There are two specially reserved classes of affairs which may be attended to by the secretary of state, entirely on his own responsibility and independent of the council. One of these includes all communications referring to such subjects as the making of war or peace, negotiations with foreign powers and relations with native states. Such dispatches were formerly required to be sent to India by the authority of the Board of Control and through the secret committee of the Court of Directors, and they are consequently still known as "secret" communications. The other class of papers which the secretary of state may attend to solely on his own responsibility are those which he may deem to be "urgent"; although he is required to put on record his reason for such decision.[2] No question, however, for which the consent of a majority of the council is necessary can be regarded as either "secret" or "urgent." The check provided for in the act of 1858, against any charge being "placed upon the revenues of India without the sanction of the majority of the Council," is to a degree rendered nugatory by the power possessed by the secretary of state to deal with certain matters by means of "secret" communications. A secretary of state may order, and has ordered, military operations to be undertaken by the Indian government, involving the expenditure of large sums of revenue, not only without the consent but without even the knowledge of the council.[3] Such questions as an Afghan war or negotiations with China relative to the affairs of Tibet do not normally come before the council.

The act of 1858 further authorized the creation of what is commonly known as the India Office, which may be designated as the establishment or department of the secretary of state in

[1] Strachey, India, p. 68.

[2] Imperial Gazetteer, vol. iv, p. 37.

[3] Chesney, Indian Polity, pp. 371, 372.

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council.[1] The salaries, pensions and other charges of the India Office are entirely defrayed from the revenues of India. This is in harmony with the principle that India is financially independent of Great Britain.[2] Britain contributes nothing to the maintenance of her Indian dependency, which statement is equally true if reversed. All charges incident to the administration of India, whether for the India Office in London or for the government and army in India, are paid for out of Indian revenues.

In common with all other dominions of the British Crown, India is subject to the ultimate control of the Parliament in London. In general, the constitution of the government, both in India and in England, has been created and is regulated by acts of Parliament. Under ordinary conditions British legislation for India is confined to acts amending the political constitution and to acts empowering the secretary of state to raise money by loan.[3] Despite the parliamentary control of Indian administration, however, the revenues of India are not under the direct authority of Parliament, except in a single unimportant respect, namely, that Indian revenues may not be applied to the payment of expenses of military operations beyond the Indian frontier without the consent of both houses, except in a case of sudden and urgent necessity.[4] It is provided also that the Indian budget shall be laid before Parliament annually, together with a report showing the moral and material progress of India.[5]

The central government in India

Some account has already been given of the gradual development of the government in India from what, in the first instance, was the administration of the Bengal presidency alone. It has also been noted that the first statutory recognition of a definitive government for the East India Company's territories in Bengal was granted in 1773 by Lord North's regulating act, and that the act of 1858, transferring the government of India to the Crown, made no important change in the administration

[1] Imperial Gazetteer, vol. iv, p. 39. [2] Strachey, India, p. 117.

[3] Report of Royal Commission upon Decentralization (Cd. 4360), p. 9.

[4] Imperial Gazetteer, vol. iv, p. 40.

[5] Report of Royal Commission upon Decentralization (Cd. 4360), p. 9.

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in India. Although the term "viceroy" has been commonly applied to the governor-general during the past fifty years, it is not recognized by law nor has it ever been employed by Parliament.[1] It originated in the well-known royal proclamation of 1858, wherein Lord Canning was referred to as the "first viceroy and governor-general" under the new régime.

The governor-general in council is responsible for the entire administration of British India and for the control exercised over the native states. The actual work of governing, however, is divided between the central government in India and the provincial governments. The central government (the governor-general in council) retains in its own hands all matters relating to foreign relations, the defences of the country, general taxation, currency, debt, the tariffs, posts, telegraphs and railways. Such matters of ordinary internal administration as the assessment and collection of revenues, education, medical and sanitary arrangements, irrigation and roads are attended to by the provincial governments; although even in these matters the central government exercises a supervisory control.[2] The provinces, furthermore, are required to present their annual budgets to the central government, which may modify the same when necessary. Every new appointment of importance has to receive its specific approval; and there is a wide field of appeal to the government at Calcutta from both officials and private citizens who may consider themselves aggrieved by the action of a local government.[3] Even the governors of Bombay and Madras, who, like the viceroy himself, are English noblemen appointed directly by the crown, possess restricted powers and are subordinate to the governor-general in council.[4] The executive government of India, as constituted at present, consists of the viceroy and governor-general and an Executive Council of six members, one of whom, the commander-in-chief, is appointed as an extraordinary member.[5] This council is a direct

[1] Chesney, Indian Polity, pp. 132, 133.

[2] Imperial Gazetteer, vol. iv, pp. 16, 17. [3] *Ibid.* p. 17.

[4] Ilbert, The Government of India, pp. 190, 191, 221–225.

[5] Memorandum on Results of British Rule (Cd. 4956), p. 2. Statesman's Year Book, 1910, p. 117.

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descendant of the first governor-general's council of four members, provided for by the act of 1773. The councilors are appointed by the Crown, on the advice of the secretary of state; and while some of the so-called ordinary members are drawn from the Indian services, others are appointed direct from Great Britain.[1] Three of the members of the council, for instance, are required to have been for at least ten years in the service of the crown in India—a rule which insures at least a partial membership of experienced administrators acquainted with the peculiarities of the Indian situation. The usual tenure of office of a member of the government in India is five years. This limit is not imposed by statute nor by the process of appointment; it rests solely on custom. The origin of the custom is ascribed to the short-lived act of 1773, which limited the term of office of the councilors to five years.[2]

The form of the central government in India has undergone a notable modification during the past century, as is shown by the change that has occurred in the character of the viceroy's Executive Council. The council was originally a consultative board, to which all sorts of questions were submitted and in which all questions submitted were decided by majority vote. The governor-general presided and initiated all business; and it was under his direct orders that the secretaries of the various departments carried on their duties. From such a beginning the council has evolved into what is now virtually a cabinet, by which business is carried on as in European states in separate departments.[3] This process of transformation has been both natural and simple. Since the time of Lord Cornwallis, appointed governor-general in 1786, the viceroy has been legally authorized to override the majority of his council and to act on his own responsibility in matters of serious moment. The circumstances, however, which prevailed during the régime of Warren Hastings and gave rise to that enactment have not recurred, and this special power has hardly ever been exercised.[4] Under the board system introduced by Lord Cornwallis, the

[1] Report of Royal Commission upon Decentralization (Cd. 4360), p. 10.
[2] Ilbert, The Government of India, p. 47.
[3] Chesney, Indian Polity, p. 127. [4] Imperial Gazetteer, vol. iv, pp. 18, 19.

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members of the council exercised no individual responsibility; they acted merely as advisers, offering opinions on the matters put before them. A departure from this system was brought about by the appointment of special members for law and finance. With the extension of territory which occurred during Lord Dalhousie's rule as viceroy, accompanied by a natural increase in the amount and complexity of business to be transacted by the central government, it became practically impossible for the Executive Council to deal collectively and efficiently with all the business referred to it.[1] The burden was rendered heavier by the events of 1857. Accordingly, shortly after the Mutiny, the then governor-general, Lord Canning, abolished the practice of submitting ordinary business to the council and introduced a beginning of the present system, under which each member takes the management of one or more departments of the administration, and only the more important affairs are dealt with by the governor-general or the council collectively. This procedure was legalized by the Indian Councils Act of 1861, which contained a clause authorizing the governor-general to make from time to time "rules of business" for the convenient dispatch of business.[2]

Under the system thus inaugurated there has since been developed the cabinet form of administration, in which the members of the council correspond to ministers in charge of distinct departments. Their ordinary duties are rather those of administrators than of councilors. The departments of the government are: foreign, home, revenue and agriculture, legislative, finance, public works, commerce and industry, army and military supply. The governor-general himself generally administers the foreign department. The commander-in-chief, who takes part in the deliberations of the council as an extraordinary member, has charge of the army department. The legislative department is, at the present time, under the control of an eminent Hindu barrister, who is the first native Indian to occupy a place in the governor-general's Executive Council. His ap-

[1] Imperial Gazetteer, vol. iv, p. 19. Strachey, India, pp. 56–59. Chesney, Indian Polity, p. 123.

[2] Report of Royal Commission upon Decentralization (Cd. 4360), p. 10.

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pointment was made possible by the recent reform measures introduced by Lord Morley. The foreign department, which is under the direct administration of the governor-general himself, transacts all business connected with external politics, with frontier tribes and with native states in India. It also controls the general administration of three minor provinces. Relations with the native states are both complex and important, for there are in India nearly 700 such states, having an area of approximately 770,000 square miles and containing a population of 70,000,000.[1] The various other departments are concerned with those questions and activities which, in general, might naturally be expected to appertain to them.

The Executive Council ordinarily meets once a week, but special meetings may be called at any time. In case a difference of opinion arises with respect to any matter, the vote of the majority prevails, subject of course to the power of the governor-general to overrule the council in exceptional cases.

India possesses also a Legislative Council, which within certain strictly defined limits has plenary power to legislate for all persons, courts and places within British India.[2] By the Indian Councils Act of 1861, the earlier legislative body provided for under the acts of 1833 and 1853 was remodeled, and the governor-general, for purposes of legislation, was authorized to nominate certain additional members to form, with the Executive Council, a larger Legislative Council. Of the additional members, one-half were to be persons not in the service of the government.[3] By the same enactment the powers and functions of this council were carefully defined and the authority of the Crown and Parliament effectively safeguarded. The same act established provincial legislative councils, whose powers of legislation were limited to such local affairs as the government in India might decide not to deal with in the central council. The Indian Councils Act of 1892 enlarged all these legislative bodies, supreme and provincial; introduced tentatively an elective element; and provided for interpellations and for discussion of budgets. These reforms resulted from a conviction

[1] Imperial Gazetteer, vol. iv, p. 21.

[2] *Ibid.* p. 133.

[3] *Ibid.* p. 131. Strachey, India, pp. 48, 49.

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that the time had arrived when the administration might gain much advantage if public opinion could be brought to bear upon it more directly. This act and the regulations made thereunder introduced a trace of representation into the general administrative system of India. To give the central Legislative Council an elective as well as a representative character, it was provided that nominations to five of the seats be made on the recommendation of the Calcutta chamber of commerce and the non-official members of the local legislative councils at Madras, Bombay, Calcutta and Allahabad. The remaining seats were to be filled by the governor-general with regard to the due representation of the different classes in the country.[1] The elective principle was present, therefore, only in the most shadowy form, inasmuch as the governor-general nominated all the members of the council. The only elective element in the scheme consisted in the fact that he nominated five members on the recommendation of unofficial bodies. The viceroy, moreover, was empowered to refuse to follow any recommendation if the individual in question was deemed to be dangerous to the government. That a serious effort was made to secure the representation of the native population is shown by the fact that, of the twenty-four persons comprising the governor-general's legislative council in 1904, eight were natives of India.[2]

The powers of the Legislative Council, as determined by the act of 1861, were considerably enlarged by the amending act of 1892. By it permission was granted to discuss the annual budget, subject to the proviso that no member should use the privilege to propose any resolution or to divide the council. Nor was the council empowered to interfere with acts of Parliament. Its own enactments, on the other hand, might be disallowed by the sovereign, acting through the secretary of state.[3]

The expansion in the size and functions of the various Indian councils, the proposal for which emanated from the government in India, was the beginning of what is likely to develop into

[1] Ilbert, The Government of India, pp. 110–121; 337–348.

[2] Imperial Gazetteer, vol. iv, p. 132.

[3] Report of Royal Commission upon Decentralization (Cd. 4360), p. 10.

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something resembling parliamentary institutions.[1] A much longer step in the same direction was taken by Parliament through the passing of the Indian Councils Act of 1909. The number of members in the viceroy's Legislative Council has been more than doubled; and although the official majority is still to be retained therein, the elected element has been greatly increased. In passing this enactment Parliament adhered to the policy, adopted in the act of 1892, that representation by classes and interests is the only practicable method of embodying the electoral principle in the constitution of the Indian councils. As constituted by the recent act, the central Legislative Council consists of sixty-eight members, of whom thirty-six are official and thirty-two non-official.[2] Special provision is made for the representation of Mohammedans. The act of 1909 further confers on the various councils increased powers. Members may divide the council when the financial statement, or budget, is under discussion, and may embody their suggestions in the shape of recommendations.[3]

The provincial or local governments

British India, or that portion of India under the control of the governor-general in council, is divided into eight large and five minor provinces, each of which is administered, in subordination to the central government, by its own local government.[4] A common notion held in the Occident, that somehow or other the secretary of state for India and the viceroy and his council carry on the actual administration of India, is misleading. The eight chief provinces, on the contrary, may be compared, in area and in population, to the leading countries of Europe, and they further have their own separate and, in a measure, independent governments. Good or bad administration in India depends to a greater extent on the provincial government than on the authorities in Calcutta or in London.[5]

[1] Chesney, Indian Polity, pp. 151–153.

[2] Regulations for giving effect to the Indian Councils Act, 1909 (Cd. 4987), sec. i, pp. 1–5; sec. xi, pp. 1, 2.

[3] *Ibid.* sec. x, pp. 2–5.

[4] Report of Royal Commission upon Decentralization (Cd. 4360), p. 14.

[5] Strachey, India, pp. 6, 7.

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The past fifty years have enormously multiplied the manifold duties devolving upon the various government authorities in India. The administrative, judicial, revenue and executive business to be performed has probably more than doubled.[1] Efficiently to transact this growing volume of business, it has been necessary, and will continue to be necessary in an increasing degree, to devolve power and responsibility upon the local governments, and from these in turn upon subordinate authorities. The tendency is perhaps best illustrated in the development during the last half-century of the Indian financial system. Formerly the absolute control of all the finances throughout India, even to the smallest detail, was in the hands of the Indian central government. The sanction of the governor-general in council was required before even "a messenger on a rupee a week could be permanently engaged."[2] A policy of decentralization was initiated in 1870 and developed between 1877 and 1882, which was intended to obviate the need for interference by the central government in the details of provincial administration and, at the same time, to maintain the unity of the finances in such a manner that each of the governments (central and provincial) should receive a due share of the increasing revenues to meet growing needs and should bear in proper proportion the burden of financial difficulties.[3] Accordingly the central government transferred to the provincial authorities the entire management of certain heads of civil expenditure; allotted to each local government fixed grants, to pay for those departments or services; and gave to each local government full discretion to expend those grants to the best advantage, subject to budget rules and to the ultimate control of the secretary of state.[4] Behind the control of the government in India, of course, is that of the secretary of state for India in council, who has laid down the principle that without his sanction no new office can be created which carries a salary of more than $2000 a year, no serious departure can be made from the ratified budget

[1] Memorandum on Results of British Rule (Cd. 4956), p. 4. [2] *Ibid.* p. 19.

[3] Imperial Gazetteer, vol. iv, pp. 25, 26, 190.

[4] Memorandum on Results of British Rule (Cd. 4956), pp. 19, 20.

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estimates, and no new undertaking can be launched which involves large expenditures.[1] Similarly the provincial governments have been endowed with certain financial powers by the central government. Subject to certain conditions, they are empowered to create appointments and raise salaries up to an individual limit of 250 rupees a month.[2] This transfer of power has obviated many petty references to the central government.

Of the five minor provinces, Coorg and Ajmer are scarcely more than districts and are respectively administered by the British resident in Mysore and by the agent to the governor-general in Rajputana. A third province, the Andaman and Nicobar Islands, is practically a penal settlement.[3] The chief commissioners of the two remaining minor states, the North West Frontier Province and Baluchistan, are agents to the governor-general in respect to political matters. The administration of these five lesser states is more directly under the control of the government in India, and especially of its foreign department, than is the administration of the major provinces. These smaller provinces, moreover, lack the financial powers which have been accorded to the larger provinces.[4]

The eight major provinces are the old presidencies of Madras and Bombay; the five lieutenant-governorships of Bengal, the United Provinces of Agra and Oudh, the Punjab, Burma, and Eastern Bengal and Assam; and the chief commissionership of the Central Provinces. Madras and Bombay still retain certain vestiges of their early importance and independence. In each of these presidencies, the civil administration is vested in a governor in council, who is appointed by the Crown, whose powers and duties are regulated by act of Parliament,[5] and who is usually a man of rank and experience; and in each, until recently, the council consisted of two persons, likewise appointed by the Crown, who must have served for at least twelve years in India

[1] Memorandum on Results of British Rule (Cd. 4956), p. 19.

[2] Report of Royal Commission upon Decentralization (Cd. 4360), p. 27.

[3] *Ibid.* p. 14. Imperial Gazetteer, vol. iv, pp. 56, 57.

[4] Report of Royal Commission upon Decentralization (Cd. 4360), p. 14.

[5] Imperial Gazetteer, vol. iv, pp. 30, 31.

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and who have always been selected from the Indian civil service. Lieutenant-governors are appointed by the governor-general, subject to the approval of the Crown. They must have served at least ten years in India. Chief commissioners stand upon a lower footing, being delegates of the governor-general in council, by whom they are appointed. In practice, however, the chief commissioner of the Central Provinces is intrusted with powers virtually as great as those exercised by a lieutenant-governor. The special restrictions imposed upon him are mainly in the matter of patronage. In provinces administered by chief commissioners there is no legislative council.[1]

Prior to 1909, Madras and Bombay were the only provinces provided with an executive council to aid the governor in his administration. The Indian Councils Act of 1909 increased the number of members of these two councils from two to not more than four[2]; it also empowered the governor-general in council to create a similar executive council to aid the lieutenant-governor of Bengal; and it provided that under certain conditions such a body might be instituted in any other lieutenant-governorship.[3] Prior to this act, all the major provinces, with the exception of the Central Provinces, had legislative councils. By this act the number of members in these councils was more than doubled, and the elected element was also enlarged. Prior to 1909, the maximum strength of the Indian legislative councils (including both the central and the provincial councils) was 126 members: it was increased to 370. And in place of the 39 elected members provision was made for 135. In the old councils, furthermore, officials were in a majority in every instance; the act of 1909 established a non-official majority in every provincial council.[4] This reform is one of far-reaching significance. It is a bold experiment, the results of which it is difficult to forecast. Nor has reform been confined to the con-

[1] Imperial Gazetteer, vol. iv, pp. 31–33. Report of Royal Commission upon Decentralization (Cd. 4360), pp. 14, 15.

[2] Government Statement of Moral and Material Progress of India during the Year 1908–09, p. 2.

[3] *Ibid.* p. 2.

[4] Regulations for giving effect to the Indian Councils Act, 1909 (Cd. 4987), sec. xi, p. 6.

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stitution of the councils; their functions also have been greatly enlarged. In the future their members will take a real and active part in shaping the financial proposals for the year, and, in general, will have a greater share than heretofore in legislation of all kinds.

There are other features of the Indian administration, no less essential to administrative efficiency and to the welfare and progress of the Indian peoples, to which, in this article, it is possible only to direct the student's attention. The development of local self-government is based largely on a system which entrusts local administration to municipal and rural boards. At the end of the year 1909 there were such boards in 717 municipalities, containing a population of nearly 17,000,000 people, and in 709 rural districts and localities.[1] Contrary to the common belief that the administration of India is chiefly in the hands of Englishmen, the number of native officials is surprisingly large, and it is constantly increasing. The feudatory native states, which, as already noted, contain over 70,000,000 inhabitants, enjoy a large measure of administrative independence.

Especially noteworthy are the conclusions and recommendations contained in the report of the Royal Commission upon Decentralization, published in 1909. Among other changes the commission recommended: a further enlargement of the powers of the central and provincial governments in India, in respect to the creation of new positions and the raising of salaries; further decentralization of administration as regards forests, police and public works; an enlargement of the powers of the district collector, who, in the opinion of the commissioners, should be the recognized head of the district in all administrative matters; and the extension of the regular system of council government, as it exists in Madras and Bombay, to all the lieutenant-governorships.[2]

It may be said, in conclusion, that the reforms, both executive and legislative, introduced under the act of 1909 mark a

[1] Government Statement of Moral and Material Progress of India during the Year 1908–09, pp. 104, 105, 108.

[2] Report of Royal Commission upon Decentralization (Cd. 4360), pp. 297–311.

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real advance toward the goal of intelligent self-government by native Indians. What will be the outcome of this grant of direct representative institutions is uncertain; but, in the words of an eminent British-Indian administrator, a stage has been reached in the relations between India and England "at which political reforms have become necessary," even if "the granting of these reforms may involve some falling away from that administrative efficiency which has been the Englishman's ideal."[1]

The extension of Indian political reforms ought to be cautious and deliberate, for in India there is no notion of representative or elective government except among a relatively small number of educated men. For this reason, with the growth of a representative system of government the vast masses of ignorant and poverty-ridden people may conceivably suffer at the hands of their educated and ambitious fellow-countrymen. The landlord and lawyer classes in India have fattened upon the rack-rented and litigious cultivators of the soil. In the past it has been the disinterested British administrator who has defended the rights of the helpless masses. Tenancy laws, for instance, assuring to the peasants certain rights of occupancy and fair rents, have been passed by the government authorities in the face of determined opposition on the part of the non-official members of the councils, who usually have been of the landlord or lawyer classes. "I am under the strong opinion," said Lord Curzon, in the House of Lords, on February 23, 1909, "that as government in India becomes more and more parliamentary—as well may be the result—so it will become less paternal and less beneficent to the poorer classes of the population." But despite a possible decrease in administrative efficiency, which is not wholly certain, Great Britain is meeting the demands of its national conscience in seeking to develop self-government, which, exotic though it be, is believed by many Englishmen to be possible of cultivation in India.

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[1] Arundel, The Nineteenth Century and After, May, 1909.

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REVIEWS

The Interest of America in International Conditions. By A. T. Mahan. Boston, Little Brown and Company, 1910.—212 pp.

In this little book Admiral Mahan has not proposed to himself a detailed study of American interests abroad; he looks rather at matters from the opposite point of view and by studying the recent unfolding of international conditions discovers the extent to which our country is involved in the general development of world politics. The implied conclusion is that there is no important part of international politics, not even concerning European affairs, in which the United States is not interested. He traces the origin and character of present international groupings in Europe and especially the growth of the predominance of Germany. The position of the latter power is outlined in a spirit of justice, though not with sympathy; and although the author makes no alarming prognostications, he nevertheless recognizes the seriousness of the competition between Germany and Great Britain. In these European developments the United States is interested on account of the effect which shiftings of position and mutations of power in Europe may have upon the situation in South America and in the Far East where American diplomacy is especially active. Far from advising alliances, the author nevertheless is clearly of the view that the interests of the United States would draw us rather to the side of Great Britain than to that of her rival.

The Monroe doctrine and the policy of the open door in the Far East, parallel through the purpose of preventing one-sided national interference, are the foci of American foreign affairs. As international action bears upon these cardinal interests the aims and purposes of American diplomacy are affected. The times are therefore past when American statesmen and diplomats are justified in looking upon the intricacies of diplomatic action as alien to our national affairs and policy. This also applies to the public. Our position is indeed still a favored one, and yet, if our national policies are to succeed, the management of our affairs must be handled with that knowledge of complex diplomatic interests which characterizes the action of European powers; and this expert knowledge must be backed by an intelligent public opinion that has outgrown a native simplicity suitable only to

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the enthusiastic atmosphere of a Fourth of July celebration. The reading of Admiral Mahan's book leaves a strong impression of the national responsibilities which we have assumed and of the difficulties which will confront our nation in carrying these policies to a successful issue. So judicial-minded is the author, so fair is his method of treatment, that his readers will rarely feel a desire of contradiction, although they might not be ready to follow his judgment upon every point of detail. Thus, when he states that should Russia attempt an exclusive policy in the Far East, or undue control, she would be face to face with all naval powers whose common interest in calling her to order would insure coöperation, we are led to query what combination of powers would have stopped Russia from making herself thoroughly at home in Manchuria, had she not been successfully resisted by Japan.

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Wool-Growing and the Tariff. A Study in the Economic History of the United States. By CHESTER WHITNEY WRIGHT. Harvard Economic Studies, Volume V. Boston and New York, Houghton, Mifflin and Company, 1910.—viii, 362 pp.

Breadth of view is the distinguishing merit of this book. Dr. Wright has studied wool growing in all its relations, and the result is illuminating. The method of the work also is to be commended. In each of the eight periods that are distinguished the author painstakingly investigates all the conditions surrounding the industry, such as the growth of population, the development of manufactures both at home and abroad, the competition of cotton and other substitutes for wool, the influence of war, the changes in price of agricultural products and the consequently varying competition of general farming, and the rise of wool growing in other lands. After this broad survey of general conditions during the period studied, the author takes up the growth of the industry in each section of the United States, indicating the local conditions that favored or retarded its development.

Up to the War of 1812 sheep were kept only as a part of the old household economy, and commercial wool growing began only with the factory production of woolen goods. Centering at first in New England and the middle states, the industry was driven out by dairying and moved westward with the frontier across the Mississippi valley. In consequence of expanding markets and high prices for farm products, combined with lessening transportation rates, which favored grain as

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against wool, the sheep were driven from the middle West to the Rocky Mountain district and the Pacific slope, only to be in turn routed from the slope by the advance of cultivation. Now the industry is making a last stand in the semi-arid regions of the Rocky Mountain states, where its only competitor is cattle grazing. Incidentally the author tells the interesting story of the introduction of the merino and the Saxony breeds, with many other striking incidents. Always he is searching for the causes of growth and decline.

On the basis of this broad study, intelligent judgment of our tariff policy becomes possible. As Dr. Wright points out, the wool grower has had to meet the competition of foreign wool and woolens, of cotton, corn and cattle. Small wonder that the tariff has really been of third-rate importance. To quote: "The grossest exaggeration has characterized general discussion and reasoning in regard to the connection between the tariff and the wool-growing industry" (page 324). Various hoary falsehoods are laid peacefully to rest, such as the assertion that the reduction of wool duties in 1883 was responsible for the decline in the number of sheep after 1884, and the statement that the Wilson tariff caused the destruction of the wool-growing industry. In the New England, middle Atlantic, north central and southern states,

> there were in 1905, after eight years of as high protective duties on wool as the country has ever known, fewer sheep than at any time throughout the period when prices in the world market were at the lowest level in years and wool was admitted free of duty [page 299].

With our advancing agriculture, sheep growing becomes relatively less profitable; and we shall maintain our relative position in wool growing, if at all, probably at the cost of an increasingly heavy tariff and higher prices. Dr. Wright states his conclusions with commendable reserve and caution. The reviewer departs from the same standpoint to the extent of expressing the opinion that the facts clearly demonstrate the inexpediency of our tariff on wool.

A more careful, solid and sane piece of work than Dr. Wright's book would be hard to find. The task is thoroughly well done and future students will have no need to do it over. If the narrative sometimes seems loaded with detail, this literary defect only adds to the scientific value of the book. It is an addition to our knowledge of American economic history and a strikingly fair discussion of one phase of our tariff policy.

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Race Distinctions in American Law. BY GILBERT THOMAS STEVENSON. New York, D. Appleton and Company, 1910.—xv, 388 pp.

Mr. Stevenson has painstakingly collected the constitutional and statutory provisions and the court decisions from 1865 down to the present time which concern race distinctions, or better, race separations. Practically all of them concern the relations between the negro and the caucasian; a few concern those between the caucasian and other races. The material is arranged under such heads as: the prohibition of intermarriage; civil rights, that is, rights in hotels, theaters and the like; separation in schools; separation in public conveyances; and suffrage. Chapters on the reconstruction of the matrimonial relations of negroes, on the "black laws" of 1865–68, and on the question, what is a negro, together with introduction and conclusion, complete the work.

The statutes and decisions are given separately, and so minutely as to make the book somewhat tedious in places and at the same time rather technical for general reading; but as a compendium of the laws dealing with this problem it is valuable.

It is interesting to note that twenty-six states prohibit intermarriage between negroes and caucasians; that twenty-one states require more or less complete separation in schools, while such separation is forbidden by fourteen; that separation in railroad trains is enforced throughout the South and in street cars by eight of the southern states; that separation at the will of the owner is, by the weight of authority, permitted at common law in cars, theaters and other places of public accommodation, although eighteen states have "civil rights bills" expressly prohibiting such distinctions; and that the rule is, approximately, that the slightest visible trace of negro blood will class a person with the negroes.

The author's concluding chapter is an interesting one. He deplores race discriminations practiced under laws that provide specifically for race distinctions, or under those that do not refer to race at all, as in the case of the southern suffrage amendments. Race distinctions, however, he thinks justifiable chiefly on the practical grounds that they prevent friction and often work for the positive good of the negro. The fundamental cause of race distinctions is a mutual race consciousness or *amour propre*.

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Work Accidents and the Law. By CRYSTAL EASTMAN. New York, The Russell Sage Foundation, 1910.—332 pp.

This is one of the six volumes in which the findings of the Pittsburg survey are recorded. No higher praise can be accorded to it than to say that it is worthy of the company of the other volumes and, equally with them, does credit to all concerned in its preparation—the investigator and writer, Crystal Eastman, the general editor, Paul U. Kellogg, and the financial mainstay, the Russell Sage Foundation. In addition to the record of work accidents in the Pittsburg district the volume contains a number of valuable appendices, including a full and cheering account of the safety provisions in the United States Steel Corporation, extensive quotations from the first report of the New York State Employers' Liability Commission, and the rules of the industrial accident department of the International Harvester Company and associated companies.

In the main the volume is a piece of descriptive sociology, which shows both a scientific thoroughness which will appeal to the trained economist and a degree of sympathy which will touch the social worker and the layman. Its statistics are full, impartial and carefully analyzed; they are presented fairly, with no visible bias, no predetermination to prove a case. The statistics are vitalized by human documents that tell, sometimes in words that throb and burn, the "short and simple annals of the poor"—the chance that snipped the thread from which a sword of Damocles ever hangs over the heads of the industrial workers, the agony and anxiety in hospital, the suffering and struggle of widow and children, the penury of relatives saddled with the care of the bereaved, the losses of society from the toll of life and limb and the farcical inadequacy of the employers' liability law.

In spite—or by reason—of its impartiality the volume is a convincing brief for the abolition of the antiquated doctrine of employers' liability in favor of the modern and humane doctrine of stated compensation for accidents. Herein lies its chief usefulness. Though the accidents investigated all occurred in Allegheny county, Pennsylvania, from July 1, 1906, to June 30, 1907, the district is so far typical of the industrial regions of America, and the law and custom were so far alike in all the states when the report was made, that the main conclusions drawn from this local investigation apply to the whole country. In this one county in one year 526 men were killed by work accidents; and in three months 509 men, injured in such accidents, were received at the hospitals of the county. Of these, 76 men suffered a serious permanent injury—

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loss of a leg, foot, arm, hand, crippling of one or both legs or arms, loss of an eye, crippled back, rupture or the like. Chief among the industries which entailed this cost of life and limb were the railways, the soft-coal mines and the steel works. Each of these is described so vividly, with its inherent and special perils, that the reader wonders why men will incur such risks for wages at all and where the older economists found the basis of their assumption that wages are higher in proportion to the disagreeableness and danger of the task.

Thirty-two per cent of the fatal accidents can be attributed in a measure to some fault of the victims, and twenty-one per cent were due to actual carelessness. The remainder were caused by ignorance, youth, physical weakness or drunkenness. In 56 out of 410 fatalities there were indications of some responsibility on the part of fellow-workmen; in 28 fatalities some act or omission on the part of fellow-workmen was the sole cause. Most of the fatalities "can be laid to imperfect inspection." Some of the defects "prove inexcusable neglect"; but most of them are explained "by the speed and pressure of work."

To reduce this "butcher's bill" (to use the phrase of the president of the British Local Government Board) is a paramount national duty. How? In the chapter on "Suggestions for Prevention" these hints are given:

> The industrial accident rate can be reduced by better factory acts, making safety requirements that shall be more definite and capable of enforcement, and extending those safety requirements so as to cover, for instance, the stringing of electric wires in mills, the placing of hand rails along crane runways. A state safety appliance act for railroads, bringing requirements up to the standard set by the federal act, could be enacted. . . . Inspectors should possess a technical mastery of the industry they deal with, inspection must be thorough and frequent and the penalty for failure to comply with orders must be swift and sure. Furthermore, a shorter workday in all employments where accidents are common, could be secured directly by legislation. But other preventable conditions must be dealt with for the most part indirectly, through the will of the employer . . . [The law can] with but little effect prescribe how often chains are to be inspected, or at what stage a defective car is to be retired from use, or what part of the work is to be done by ignorant foreigners, or at what speed it is to be carried on. To reach this group of causes, the prevention of accidents must be made of primary importance to each employer.

Under existing laws the employer bears but a slight proportion of the cost of accidents. "In over one-half of the deaths and injuries resulting from a year's work accidents the employers assumed absolutely

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no share of the inevitable income loss." In the great majority of the remaining cases they paid an "exceedingly small part of the income loss." "The community bore an inconsiderable share of the loss." Therefore the loss fell "directly and almost wholly and, in all likelihood, finally upon the injured workmen and their dependents." What did this distribution of the burden involve? In 55 out of the 132 families whose stories could be ascertained, "the widow went to work within a year after her man was killed." This almost invariably means hard work, long hours, poor pay and, in most cases, children neglected. "It is the bitter unequal struggle of one person trying to do the work of two." Among these families more than 470 children were left fatherless and 22 were put to work as a result of the accident, 15 of them being under sixteen. And thus the pitiful tale proceeds, with exact, indisputable evidence in case after case of a lowered standard of living, bitter struggle, heroic endurance, amazing family generosity and often, inevitably, final failure.

A chapter which shows the failure of the employers' liability law leads to a digest of the accident compensation laws of Germany, Great Britain and France and the statement, finally, of three requirements in legislation: (1) Every serious accident must be made a certain and considerable expense to the employer. (2) A considerable share of the economic loss must be shifted to the whole body of consumers. (3) The possibility of disputes between the parties must be reduced to a minimum.

JOHN MARTIN.

STAPLETON, STATEN ISLAND, NEW YORK.

Twenty Years at Hull House, with Autobiographical Notes. By JANE ADDAMS. New York, The Macmillan Company, 1910.—462 pp.

This volume is invaluable as a human document. It is a beautiful memorial to a father and a wonderful revelation of a life given to a great purpose. In its style it is transparent and simple, but it is filled with subtle suggestion. It is not a book that should be lightly skimmed. Throughout there is a constant searching for the fuller meaning of human life; and underneath all the tentative inquiry and sometimes apparent groping there is a strong faith and a definite and clear conviction that have given unity to the whole life so vividly described.

The first chapter shows us an almost super-sensitive child, brought up under simple conditions, which yet were most advantageous for intellectual and spiritual development. The picture of the father, who

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evidently dominated the girl's early life, is attractive in the extreme; and subsequent chapters reveal many of his traits as those of the subject of the biography. Upon the spiritual development of both father and daughter the influence of Lincoln seems to have been in some respects controlling; so that when boarding-school was reached the social sympathies born of the home life and the political sympathies developed during the great national struggle asserted themselves, only with a clearer intelligence and with a more defined program for the lifework. For although Hull House was established only after a good deal of wandering in Europe and some intellectual hesitation on the part of its founder, it is easy to see that with Miss Addams the plan of a home shared with a larger humanity was always the underlying thought.

The subsequent chapters, dealing with the first days of Hull House and some of its early undertakings, are a most effective apologetic for the whole social settlement movement. If the movement has not broken down the wall of partition between class and class, it at least has opened windows, and sometimes doors, through which one class may have access to the hopes and ambitions of the other.

Miss Addams frankly acknowledges both her lack of a political program and her realization of the comfort and sustaining strength which a cut-and-dried and dogmatic political program may afford to the social worker. But it is easy to see that in mind and temperament alike Miss Addams is incapable of dogmatism, either broad or narrow. In action she is decided and prompt, and willing courageously to face the issue and take a prophet's risk of being wrong. But when it is a matter of far-reaching answers to perplexing problems, she is intellectually too sincere to be satisfied with clear-cut but untested formulas. Her sympathy with Tolstoi in no way prevented her from realizing the weak points in his position. Her admiration for particular socialists and her willingness to coöperate largely with them has in no wise determined her judgment of socialism; and her analysis of its fundamental philosophy has left her unsatisfied and unable to include herself in the party. Even her intense activity in the social settlement movement does not prevent her seeing clearly its tentative character; and she looks forward to a possible future society so organized that the ideals of the social settlement can be more largely realized.

Nothing is more striking than the insistent modesty with which these memoirs are written. The reader might almost imagine that some one else was responsible for all the good things accomplished by Hull House and that Miss Addams had made all the mistakes; whereas anyone who has had personal contact with the activities of that settlement knows

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that in a hundred exigencies Miss Addams's sanity, gentleness and indwelling grace have been its salvation.

The book is one that should be read both by partisans and by non-partisans in the present movement for social betterment; and happily it is so written that it will be widely read. And in years to come it will be studied page by page by those who may be puzzled to comprehend the manifold confusions of our American life at this turning-point of the road. For the reviewer feels assured that, when the orgy of individualism that followed the occupation of free land and the exploitations of the natural resources of the continent by a restless immigrant population under the unorganized conditions of competitive struggle shall be over, and when we shall have entered upon a more ordered social state, men will eagerly seek just such a human document as this to explain a social situation which may well seem inexplicably unintelligent and needlessly tragic. We must surely all be grateful to Miss Addams that she has given to us, while the memories are still vivid and the situation not yet too idealized, this most illuminating account of the activities of Hull House, in which one sees reflected so much of the restless longing of our generation for a new world of social sympathy and human understanding.

THOMAS C. HALL.

UNION THEOLOGICAL SEMINARY.

La Crise anglaise. BY PHILIPPE MILLET. Paris, Armand Colin, 1910—x, 291 pp.

M. Millet's little volume on contemporary English politics is curiously uneven both in character and in the accuracy of his observations and conclusions. The first part consists of newspaper articles giving bright but superficial accounts of elections and electors in England in January, 1910. There is nothing whatever of serious or permanent value in these letters of a special correspondent—indeed it seems almost a pity to have incorporated them in the volume. The questions of constitutional reform, of finance, of the land and Lloyd-George's budget and of free trade and tariff reform are then taken up. The author analyses each in turn, giving short historical sketches of the policies and events which have led up to the present situation. These historical sketches are neither complete or accurate. They seem to be rather the result of research made for the immediate purpose of this volume, than of wide historical knowledge. There are even numerous errors of fact, as for example on page 109, where the Trade Union Act of 1871 is attributed to Disraeli, and on page 176, where it is stated that by English

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law a man at his death must leave all freehold property exclusively to his eldest son but must divide his leaseholds among his sons.

In spite of some errors, however, Mr. Millet's description and analysis of the Lloyd-George budget is clear and excellent. He gives a spirited account of the anomalous privileges of urban ground landlords which are affected by the new land taxes, and he also shows the depopulation of the country and the disappearance of the rural laborer under the present system of enormous estates. In regard to the land, however, he favors the policy, set out as window dressing in the Conservative election program, of assisting small holders to purchase land—a policy which as yet has not been sufficiently elaborated to make possible any criticism of its feasibility; and he is inclined to accept protection as the only real means of reviving agriculture, the decay of which he asserts is wholly due to low prices. To show the impossibility of repeopling the land under free trade, he quotes the enormous prices paid for land and shows the small percentage which landlords receive from their investment. In this analysis he omits two important facts: first, that land, when purchased to form a large estate, has a social rather than an economic value—it is bought for the sake of founding a family and sustaining a peerage; and second, that a landlord does not conduct his estate as a manufacturer manages his business. A very large part of the land is set aside for pleasure purposes—parks and shooting preserves —and the expenses due to the upkeep of the estate include large sums spent to gratify a love of beauty or of sport. The author's leanings to protection lead him into still greater errors when he criticizes the Liberals, as he does almost savagely, for their lack of enthusiasm for colonial preferences. He shows no understanding of the English colonial system, nor has he any knowledge of the fact that in Canada for instance—the most important of the colonies—the farmers, the only men who would profit by a preference in the English market, have frequently repudiated all desire for any preference at the expense of dearer food for their fellow-subjects in Great Britain. The present free-trade movement in Western Canada, and the negotiation of the reciprocity agreement between Canada and the United States would have changed the face of affairs as regards tariff reform, even if Mr. Balfour had not deemed it wise to thrust protection into the background at the recent election by his proposal to subject it to a referendum.

M. Millet evidently considers British trade as doomed if Great Britain fails speedily to adopt a protective tariff. At the present moment, the people of Great Britain, with Board of Trade figures showing a greater volume of exports and imports than ever before in their history, are

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not eager to listen to the new gospel, nor to let go of the well-tried policy that has given the people cheap food and the manufacturers enormous prosperity. They are inclined rather to try the effect of freeing themselves from the abuses of a land system which, in the eighteenth and nineteenth centuries, was carefully built up to the advantage of the landholders by a Parliament absolutely controlled by the landed interest. Free trade combined with free access to the land has never yet had a fair trial. The Liberals prefer to make this experiment rather than to return to a discredited theory of protection. It is certainly unfortunate for the author that the December elections in England should have failed to fulfil his anticipations of the success of tariff reform.

There is nothing hostile to England in M. Millet's volume. It is the friendly and disinterested criticism of a goodnatured onlooker.

A. G. PORRITT.

HARTFORD, CONNECTICUT.

Land and Labour: Lessons from Belgium. By B. SEEBOHM ROWNTREE. New York, The Macmillan Company, 1910.—xx, 633 pp.

The family Rowntree has not only been a prominent factor in the industrial supremacy of England but has also made valuable contributions to the analysis of modern economic problems. To Joseph Rowntree we owe a series of books on the liquor trade, written from the social and fiscal points of view. To B. Seebohm Rowntree we are indebted for the well-known volume on *Poverty: A Study of Town Life*. The latter writer has now supplemented his earlier studies by the volume under review. His ultimate object is to throw light upon the problem of poverty in Great Britain by discussing its relation to the system of land tenure, and as a preliminary step he has investigated the corresponding conditions and relations in Belgium. The result is a most interesting volume. It includes the history of land tenure in Belgium; a detailed analysis of Belgian industrial conditions; an inquiry into the relative merits of large and small farms and into the division of rent between tenant and owner; a discussion of transport facilities, of taxation and of education; a description of the standard of life and of housing conditions; and, finally, a study of poverty, poor laws and unemployment. Four years of investigation have enabled Mr. Rowntree to collect a unique mass of material, which is presented with all the skill and grace of style which we have learned to expect in the works of this author. His conclusions, based on thorough study, formed with

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scientific caution and weighed with sobriety of judgment, cannot but commend themselves to the careful attention of all students.

The facts he finds to be as follows. The density of population in Belgium is great, but the rate of immigration is low. The land is much divided: one out of every ten persons owns a plot, and large estates, such as are found in England, are practically non-existent. Sixty-five per cent of the agricultural population are farmers, and only thirty-five per cent laborers—just the reverse of the English ratio. Although the soil is of poor quality, the yield per acre is higher than in any other European country. The rent of land is about twice as high as in England. The state forests are relatively four times as large as in England and are growing rapidly. The system of main and light railways and of canals furnishes the best transportation in Europe. Housing conditions are on the whole satisfactory. On the other hand, while Belgium is an industrial center, the condition of its workmen is far inferior to that of the English. The standard of elementary education is low. About one-sixth of the working-class income is spent in drink. Poor relief is badly organized. Taxation, while not heavy, tends to check enterprise. On the whole however, there is less unemployment in Belgium than in Great Britain. These being the facts, what light do they throw upon the problem of poverty?

First, as to the industrial population. Wages are low, partly because the productivity of the workmen is low, partly because relatively few are engaged in the manufacture of goods of the highest quality and partly because of the weakness of the trade-union movement. In these matters England has little or nothing to learn from Belgium. The future progress of Belgium may be looked for along three lines: better factory laws and the strengthening of the trade unions; compulsory education and a higher standard of education, as well as a strengthening of the temperance sentiment; finally, a reform in the method of charitable relief, which at present saps the independence and virility of the democracy.

As regards the agricultural population, although the Belgians enjoy many advantages, the lot both of the peasant proprietor and of the tenant farmer is far from satisfactory. The immediate cause of the hardness of their lives, in the author's judgment, is not that they cannot produce enough from the soil, but that land values are so high. The cure for this, the author concludes, after a comparison with English conditions, will be found, on the one hand, in a development of industrialism, so that the agricultural laborers may have open to them the alternative of work in the towns, and, in the second place, in some

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method of diffusing among the population at large a part of the unearned increment which now goes to the landowners.

The lessons which Mr. Rowntree thinks that Great Britain may draw from Belgian experience, as regards the problem of poverty, are these: (1) The land question is at the bottom of the poverty question. Steps must be taken which will make it easy for Englishmen to obtain land in small plots, either by purchase or as tenants with reasonable security of tenure. (2) Adequate means of cheap and rapid transit through the country districts must be provided. (3) Coöperative methods must be introduced into agriculture. (4) Agricultural education of a kind fitted for small holders must be provided on a liberal scale. (5) Large parts of the country must be reafforested, for the forests of Belgium "materially help to regulate the labor market and prevent unemployment." (6) Urban transit facilities must be so improved as to enable the industrial workers to live in the distant suburbs. This will revolutionize housing conditions. (7) The unearned increment of land, both rural and urban, must be utilized for social purposes.

If Mr. Rowntree's conclusions approve themselves to the British public, there is little doubt that Great Britain stands on the threshold of a gigantic economic and social transformation.

E. R. A. S.

La Question agraire en Italie: Le Latifundium romain. By PAUL ROUX. Paris, Félix Alcan, 1910.—267 pp.

The agrarian problem in Italy carries us back to the time of Spurius Cassius, who, tradition tells us, lost his life contending for the right of the Roman peasants to the use of the public lands. The struggle between plebeian and patrician for the right of pasturage, the losing battle of the small farmer against the latifundist with his horde of "speaking tools"; the heroic failure of the Gracchi to repeople the land; the completion of the ruin by the harassing tax-gatherer and the plundering barbarian—this story of strife, misery and despair has been so often told that it is familiar to even the casual student of Italy's history. But how it fares with these same fields to-day is not so well known, and M. Roux has rendered genuine service by his faithful presentation of the present agrarian problem in the province of Rome and of the efforts made to solve it.

For this study the author has chosen two contrasting districts of the province, the Agro Romano, which he defines as a region extending in all directions from Rome to a distance of from 15 to 30 miles, and a region lying just to the north of this, with the city of Viterbo as its

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center. The Agro Romano consists in part of the low-lying, pestilential Roman Campagna; and while the major part is broken by hills and sharp ravines, the natural drainage of the region as a whole is defective, stagnant water abounds and during much of the year malaria in its deadliest form prevails. The more northern region, on the contrary, is high and rolling and has excellent drainage.

In the Agro Romano, the land is concentrated in the hands of a few; the *latifundia* prevail. The land is given over to pasturage, with incidental tillage carried on in the most primitive manner. Formerly there were many small flock owners; but of late years the big men have swallowed up the little. Large flocks are the rule and each year witnesses a decline in the independent shepherd population. The Agro Romano has no stable population. The shepherds wander here and there with their flocks. The *latifundium*, with its sporadic, extensive tillage, cannot furnish work the year round or certain work from season to season; and, apart from a few wage-workers, it must depend on migratory laborers from other parts of Italy, who bring their families and at the end of the harvest return to their homes. The owners of the soil in the Agro Romano represent the most glaring form of absentee landlordism. They seldom visit their estates, they know nothing about agriculture, and their only interest lies in wringing the largest possible income from the land. The migratory families that till the soil live in squalor and misery. They are housed in wretched, makeshift huts and are employed and superintended by irresponsible intermediaries (*les caporales*) who oppress and plunder them. These laborers are almost entirely neglected by the church and no educational facilities are afforded them. There are few inns; means of communication are lacking; and, although living almost in sight of the dome of St. Peter's, the inhabitants of the Agro Romano are practically shut off from civilizing influences.

In striking contrast to the Agro Romano, the region about Viterbo is dotted with well-populated villages, and offers a surplus of labor; but here the people must desert their homes to gain a living, for here too the *latifundia* prevail. An increasing portion of the land is turned into pasturage and a continuous battle rages between the latifundists and the villagers for the use of the soil.

To understand this struggle we must first briefly consider the system of land tenure. Formerly collective ownership prevailed, but at present most of the land belongs to communes, to individuals or to ecclesiastical or other organizations. Proprietorship is, however,not complete, for the land has not been freed from the old rights of public usage.

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The peasant has been worsted in his competition with the latifundist for the leasing of the communal land, and he is forced to depend on his rights of public usage. But the exercise of these rights is unsatisfactory to both the peasants and the proprietors. To the proprietors, because

> The rights of public usage are often ill defined, always indeterminate and very elastic. If the population is sparse and the cattle few, the rights of wood cutting and pasturage rests lightly on the lands of the proprietors; if, on the contrary, the people are numerous and the cattle many, the woods are ravaged and no pasturage remains for the cattle of the proprietors.

On the other hand, the peasant has gradually lost the right of tillage; and the increasing value of pasturage to the latifundist, together with the growing population, has greatly restricted the peasant's rights to pasturage and wood. In 1820 it was decreed that communes which were in debt might dispose of their lands but that the rights of public usage should be reserved to the inhabitants. Later these rights were in many cases disposed of to persons other than the proprietors of the lands on which they were exercised. Consequent confusion and uncertainty have kept agriculture in a primitive state, resulting in chronic anarchy and often in bloodshed. Under the leadership of the socialists, peasant leagues have been formed during the last decade with the object of regaining the rights of public usage, of forming "agricultural guilds" (*universite dell' arte agraria*) and of establishing collective estates (*dominii collettivi*).

Reform through government intervention has been attempted. In 1849 a law was passed to abolish the rights of public usage on private estates, but nothing came of it. By the law of June 4, 1888, supplemented by the law of July 2, 1891, the rights of public usage were limited and defined and provision was made for their gradual abolition on all lands, whether communal property or private estates, and for the payment of suitable indemnity, to consist either of grants of land or of fixed annual rentals, according to whether the persons possessing such rights were themselves exercising them or had leased them to others. This law has failed to meet the expectations of its sponsors. It was badly drawn and the problem had not been sufficiently studied. The peasant was not fitted for the intensive agriculture by which alone he could earn a living under the changed conditions. The indemnity was far from sufficient and moreover it was usually paid not in land but in money. Of the 1977 cases in which the law was applied in the province of Rome, from 1889 to 1904, there were only 37 in which the indemnity consisted of land. A still more serious objection, from the peasants' standpoint, is that the law made the rights of public usage definite

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and inelastic, whereas they had formerly been vaguely defined and elastic, expanding with the growth of the population. The law has been badly and half-heartedly administered; and instead of allaying strife, it has fomented it. Yielding to popular clamor, the government finally suspended it in 1908.

At present there is agitation for a law under which the nominal proprietors of the land shall be expropriated, with indemnity, and the land turned over to the peasants to be held collectively. Such collective bodies already exist in the "agricultural guilds," and from a study of these the author concludes that such a system of ownership is adapted only to extensive culture and that in the case of lands favorable to intensive culture it tends to evolve into private ownership.

M. Roux gives considerable attention to the government's attempt to stamp out malaria by draining the Agro Romano and by supplying quinine either free or at a nominal price. Its efforts at drainage have largely failed, through bad administration and the opposition of the latifundists; but the direct campaign against malaria has been highly successful.

As to the future of the Agro Romano, the author is rather pessimistic. The government's attempt to free the land from servitude has failed; the latifundist opposes all reform on general principles; collective agriculture has not succeeded; the church is hostile or indifferent; and the peasant has not shown capacity for intensive agriculture and does not not respond to efforts to aid him. Improvement must come from private initiative and from without, as evidenced by the fact that farmers who have come in from Lombardy are accomplishing what legislation has failed to bring about. But the author's own statement of the facts leads to the conviction that, if the government had grasped the magnitude of the problem and, turning a deaf ear to both latifundists and collectivists, had resolutely gone about the establishment of a genuinely free proprietorship, the building-up of a prosperous rural community, even out of raw material so unfavorable as the ignorant and poverty-stricken peasants, would have been by no means impossible. For the author states that when this same peasant returns from America and with his savings buys a little farm, he not only wins success but also leavens the entire neighborhood.

This book will be valuable to students of agrarian problems; and those interested in immigration should also find it instructive because it throws light on the antecedents of many of our Italian immigrants.

JESSE E. POPE.

WASHINGTON, D. C.

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State Socialism in New Zealand. By JAMES EDWARD LE ROSSIGNOL, professor of economics in the University of Denver, and WILLIAM DOWNIE STEWART, barrister-at-law, Dunedin, New Zealand. New York, Thomas Y. Crowell and Company, 1910.—311 pp.

Of the many books which represent the interest excited among western European social reformers by the experiments now in progress in the European settlements in the antipodes, this is one of the best. The product of the combined efforts of two men, one of scientific training and the other intimately acquainted, because of residence, with local conditions and, because of professional education and experience, with the course of legislation, this book promises to give those desirous of learning what New Zealand is doing an exceptional opportunity of realizing their desire. This promise, furthermore, is fulfilled. Every subject treated is given its proper historical background, while the general course of events is made clearer by a description of the climatic and geographic conditions which have been so potent in determining the development of the British Isles of the southern hemisphere.

The various elements in the policy of New Zealand are taken up, one by one, in special chapters. Land tenure, roads and railways, finance and taxation, state insurance, old-age pensions, compulsory arbitration and labor legislation are all considered with a wealth of historical and statistical detail which produces on the reader a highly satisfactory impression of complete local knowledge supplemented by a firm scientific grasp of each theme.

One rises from reading the book with the same feeling which a visit to New Zealand leaves in the traveler. While an analysis of the separate experiments in governmental policy which have been made in New Zealand shows that none has been markedly successful and that some have apparently failed, it is nevertheless clear that the rather radical policy initiated about 1890 has been followed by great prosperity. That a country whose settlement by Europeans began only in 1850 should have become in the brief period of six decades the richest country in the world, as regards its *per capita* wealth, is a fact which not only attracts attention but requires explanation.

Two answers to the query which New Zealand's development raises are conceivably possible. On the one hand, it may be contended that a correct appreciation of the success or failure of any one of New Zealand's experiments may not properly be based on a statistical measure of its financial results. Against the fact that the railways do not pay their way may be set the fact that they are operated in the public in-

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terest rather than for private profit. In like manner, the apparent break-down of compulsory arbitration of labor disputes may be offset by the fact that the existence of the law has discouraged labor disturbances and has therefore saved much waste.

On the other hand, it may be asserted that the success of New Zealand has been due to economic conditions which neither its government nor its legislation nor even its people have to any appreciable degree created. This would appear to be the view of our authors. The chief causes of New Zealand's prosperity seem to have been, first, the high price which wool has commanded for some years past (for wool is by far the most valuable product of the islands) and, second, the discovery, made in 1887, that mutton and dairy products could be refrigerated and placed on the European markets at prices sufficiently high to cover the cost of transportation and yield a profit.

Whether New Zealand would have done better or worse had her governmental policy been different is a matter for conjecture rather than one susceptible of proof. It is, however, our authors' belief that at present a somewhat conservative feeling is growing in the country. This feeling is not exactly reactionary; it is not a feeling that much that has been done must be undone; it is rather a reluctance to extend much further the sphere of governmental activity. Doubtless the action of the New Zealanders will be determined by practical considerations. No one who visits that country can come away with the notion that its people are in any proper sense theoretic socialists. They seem to have no theory at all on this question. They have therefore been willing in the past to solve on its merits every problem connected with public ownership. Under the conditions existing in Auckland it seemed wise to make provision for the private ownership of the street railways, and this policy was adopted in that locality. On the other hand, the people of Christchurch preferred municipal ownership and operation. In the same way, the people of New Zealand as a whole have decided for government action in particular matters, not because they believed in government ownership and operation in general, but because they believed that in New Zealand private ownership in these particular fields of activity would be less advantageous to the community than public ownership. The favorable conditions which have at least accompanied their experiments, whether they have resulted from the experiments or not, can hardly be regarded as arguments for a change of policy. It is, however, clearly the belief of our authors that in the future the governmental policy will be more conservative than it has been in the immediate past.

F. J. G.

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France under the Republic. By JEAN CHARLEMAGNE BRACQ. New York, Charles Scribner's Sons, 1910.—vii, 376 pp.

In his preface Professor Bracq tells us that he "has attempted in this book to gauge the great political experiment of France during the last four decades, and to make an inventory of the constructive and reformatory work of the Republic." And although his volume is not a large one, it embraces a rapid and yet detailed survey of almost every phase of activity—economic, intellectual, scientific, moral, religious and political—and gives a fairly comprehensive picture of "the social laboratory of Europe." Moreover, the picture is clear, and it should prove exceedingly interesting to those who know France only in a casual way and see it only across national prejudices.

The latter half of the volume is devoted to the religious crisis. As a French Protestant, Professor Bracq has "endeavored to set forth objectively the contention between Catholics and Free Thinkers in the light of impartial law, which the former almost systematically oppose and the latter not infrequently disregard"; and the objectivity is pretty well maintained. Of fresher interest, however, for both the academic and the general reader are two chapters on "Moral Instruction in French Schools" and "Extracts from Text-Books" in this field. Here is evidence which cannot be ignored of a sincere attempt to substitute for dogmatic theology a pure and reasoned morality—a morality, to quote from one of the lessons, "prescribed by conscience and founded upon human dignity." Other lessons impress upon the student his "duties toward God," and submit a series of "proofs of the existence of God." This can scarcely be called "teaching atheism."

The book is an eager challenge to all who would put France among the decaying nations. Over against the decreasing birth-rate are set the decreasing death-rate among children, the increasing longevity of their elders, the growing height of conscripts and, in general, a universally bettered national health, owing to national hygiene and education. As against the increase in alcoholism and juvenile delinquency is cited the marked social improvement in the condition of the mass. Under "Social Reform," Professor Bracq masses evidence to show how strongly foresight and coöperation are working together for good; how, more and more, the value of a man as a worker, whether with head or hands, is regarded as paramount. He cites as typical of the modern French point of view a popular vote, taken by one of the Parisian dailies, which placed Pasteur at the head of the list of great Frenchmen, with Napoleon in the fourth place. Above all, the author finds

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that France is to-day the country in which wealth is most clearly leveling upwards. As regards the increase of national wealth, he calls attention to the most significant economic fact in the recent history of France, its rapid rise to dominance in the world of European finance—a fact so strikingly evidenced during the money troubles of 1907, when the Bank of France came to the help of the Bank of England, and again more recently in the matter of the Turkish loan.

Professor Bracq has presented us with a great mass of facts, most of them new to most of us, arranged and displayed with not a little sense of style; and he has thus given us a most interesting book on a subject on which a new book was needed. If he is open to criticism, it is that in judging the merits of the Republic he is inclined to base his comparisons too frequently upon the state of affairs under the Empire. The Republic is not responsible for all the progress which France has made since 1870. Yet one who is familiar with monarchist attacks upon the Republic is not unduly disturbed by an exhibition of sturdy republicanism.

J. T. S.

The Corsican; A Diary of Napoleon's Life in his own Words. By R. M. JOHNSTON. Boston, Houghton Mifflin Company, 1910.—vi, 525 pp.

This "Diary" begins: "*August 15th, 1769. Birth at Ajaccio.* I was called Napoleon; that, for centuries past, had been the name given to the second son in our family." The controversy as to the date of Napoleon's birth is henceforth settled by contemporary evidence! So with the rest of that life which has been such a storehouse of problems; the evidence is now before us from the hand of the Man of Destiny himself, and we need no longer read what others say. We have a "Diary" (it says so on the covers), beginning with birth and ending with death, the λόγια, as it were, of Napoleon, a sort of last rich product of that higher criticism which great historic events and personalities draw to themselves. It may be well, in view of our own weakness in superlatives, to let the announcement on the outside cover—that tempting bait for the innocent book-buyer—speak for itself:

The Diary of Napoleon, here presented absolutely and entirely in his own words, tells the story of his life and career from birth to death with most extraordinary vividness and frankness, both as concerns his military campaigns and public affairs and the more intimate details of his domestic life and even his thoughts and moods. The book as a whole is one of extraordinary biographic and psychologic interest.

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In its revealing quality it is comparable to the Confessions of St. Augustine and Rousseau, the Diary of Pepys, the Autobiography of Franklin. Yet it is perhaps even more interesting than these, just as the Diarist is himself a figure of a more world-wide interest.

The editor limits himself to a two-page preface. The book is Napoleon's, not his. But we linger fondly over that preface, and we regret not to be able to quote it entire. Its profound and sober reflection upon the relation of such a work to what may be dignified as history should rank with those of Thucydides or Ranke on the sources of history:

> What truth this book conveys is not to be sought according to those rules for the treatment of historical documents which it avowedly contravenes, but in such psychological illumination of a great career and character as the method employed has rendered possible. For objectively Napoleon rarely, if ever, speaks the truth; yet subjectively how can he speak otherwise?

This is so genially simple that, we suspect it means something. And when we turn to the "Diary" itself we find that it really does. It means that since Napoleon's truth was rarely anything but subjective, the objective side doesn't matter. He was so Napoleonic a liar that it isn't worth while to indicate what was the truth in the case; and hence, in order to make the material fit, it is squeezed and pared down, dates are altered, but "except in rare cases" not more than a "day or two" (the birth was, of course, a unique incident), and some entries are pieced together out of choice bits from various sources. In short, the material is treated as Napoleon might have treated it, had he been alive and teaching history. This is why there are no foot-notes, no guides to sources, no weighing of evidence, no indications whether an entry is from a letter or a note-book or the report of a listener, but just the text, day by day. Napoleon is one of those who are said to have remarked that "history is a fable agreed upon." The only trouble is that recently it has not been agreed upon. But here at least we have a fable.

In plain English the book is a thoroughly bad one. It might have been good. The scheme was not impossible, if not too rigidly carried out. There is tremendously good material in it; that was in the very nature of the case. The translator and editor did arduous work in fitting it together, and he almost brought it to the useful stage. Why did he not face the task like a historian and not like a novelist? As it is, the book is useless for reference and unsafe for citation, because it gives the reader no means of distinguishing fact from fiction.

J. T. S.

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The Development of Religion: A Study in Anthropology and Social Psychology. By IRVING KING. New York, The Macmillan Company, 1910.—xxii, 371 pp.

This is a book worth while. It is a thoughtful and sober statement of a well-worked-out scheme of religious history, thrown upon the background of psychological research. To the present reviewer, the historical development here outlined is of greater interest than the study of the genesis of the religious attitude or the considerations of the consciousness of value which precede it. Dr. King has familiarized himself with the most recent trend of opinion with reference to that "pre-animistic" religion which Marett postulated in 1900, and which has in the last few months claimed the support of almost all anthropologists who deal with the subject. He is cautious, too, in his use of the very treacherous phenomena which are included in this theory, and he does not speak of philosophical concepts among Algonquins or Aruntas. It is surprising, however, that he should not know of the real merit of Mauss and Hubert in calling attention to *mana* in their analysis of magic. Had he done so, he would perhaps have hesitated to classify magic as he has done, rightly rejecting as unsound Frazer's distinction between magic and religion and yet preserving the two categories for the same phenomena. For it is just this *mana*, this mysterious power which makes for religion, which Mauss and Hubert have shown to be the essence of magic. Dr. King has almost come to the point where he might see that magic is no more distinguishable in kind from religion than is superstition. The distinction which he holds (and which Mauss and Hubert also hold, although Dr. King does not seem to know that they have taken this position), namely, that religion has social sanction and magic has not, is a juristic distinction. It no more implies a difference in the nature of the phenomena than does our modern distinction between customs which the courts recognize and enforce and customs which they refuse to recognize. Moreover, the social sanction of magic is as genuine as that accorded to primitive "religion." We must guard ourselves against carrying civilized distinctions back into primitive conditions. In this connection Dr. King has called attention (page 171) to a fact which few have noticed; that our knowledge of the central Australians comes to us through investigators trained in Frazer's methods and accepting his categories. Just how much "religion" was present in that magically inclined people, the Aruntas, we do not know. Durkheim pointed out, in the *Année Sociologique* for 1902, that in the totemistic ceremonies described as

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being without any "religious" content whatever there was on the contrary every indication from the setting that the ceremonies were those of genuine "religion." Now, if our sources are colored—and there are more of them in this condition than anyone knows—what are we to do with the results? In any case we cannot follow Frazer; but the subject has hardly been more than opened.

The reviewer confesses a minor interest in Dr. King's chapters on the social valuation and his endeavor to assign to religion a more or less definite place in a social-value scale. Unless this has a slightly apologetic purpose, what end does it serve? What clarity does it bring into the situation? But this may be only the reviewer's failure to understand the author's argument. In any case, what is of chief value at present in our study of the evolution of religion is close inductive investigation, from which theories may later arise. Preliminary hypotheses are always necessary in such surveys; but the author's social-value hypothesis seems rather to obscure the most interesting part of his book—the chapters which carry the narrative of religious development from a social attitude, through the origin of religious practices, to the consideration of the mysterious power in things, and then, through animism, help to trace the growth of spiritism. That in itself is a large program. It is approached intelligently and with enlightenment and is simply and well set forth.

J. T. S.

Das Florentiner Zunftwesen vom vierzehnten bis zum sechszehnten Jahrhundert. By ALFRED DOREN. Stuttgart und Berlin, J. G. Cotta's Nachfolger, 1908.—802 pp.

This work, which is very fittingly dedicated by the author to his teacher Professor Gustav Schmoller, is the most important study of gild organization that has appeared since the publication, in 1879, of Schmoller's *Strassburger Tücher- und Weberzunft.* It is the fruit of nearly twenty years' study of gild history, most of which years have been devoted to Florence. Commencing in 1893 with a suggestive contribution to the vexed question of merchant gilds, Dr. Doren published in Schmoller's *Forschungen* for 1897 a valuable essay on the gilds of Florence. This proved to be but a preliminary study for two scholarly volumes, the first of which was devoted to the woolen-cloth industry, while the second, the present volume, surveys the gild organization of Florence as a whole.

Dr. Doren has not exaggerated the importance of his subject. The interest of Florentine constitutional history is almost unique. It was

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the practical problems raised by the expansion of the greatest of the free Italian republics that gave occasion to that renaissance of state-building on classical models which has affected all subsequent political history. But the Florentine constitution came to rest entirely on the gilds (*arti*). After 1289 gild membership was essential to citizenship. Not only, therefore, did the gilds provide the state with the main part of its electoral and administrative machinery, but their internal history, also, supplies the chief clue to those social and economic developments which lie behind the striking political mutations of fourteenth-century Florence.

The chief defect of the earliest studies in gild history was that they were too much dominated by mechanical conceptions. They did not realize the complexities of the gild's organic growth or the gradual differentiation of its social, political and economic aspects, the interaction of these on each other and the reaction of the political structure of the gilds on its social and economic functions. The excessive importance attached to origins has been partly to blame for this. That a careful, detailed study of the constitution and activities of the fully developed gild furnishes the best corrective to dogmatic simplicity has been recently shown by Dr. von Loesch's admirable introduction to the gild records of Cologne; and Dr. Doren's analysis of the immense mass of documentary evidence available at Florence supplies a still ampler demonstration.

After a full discussion of the part played by the gilds in the thirteenth-century struggles of Guelfs and Ghibellines and of the gradual process by which at first seven, then twelve and finally twenty-one *arti* won their way into the constitution, Dr. Doren goes on to deal in separate chapters with the various aspects of their internal organization and external relations—with their conditions of entrance and powers of compulsion (*Zunftzwang*), with their internal class relations, their executive organs, their financial administration, their jurisdiction in civil cases, their powers of regulation in trade and industry and in matters of police, with their legislative and military functions and their administration of religious and charitable endowments. In a concluding chapter of great interest and importance he sums up the bearing of the facts thus reviewed upon the part played by the gild in its manifold and ever-varying aspects in the evolution of the state.

Though probably of much earlier origin, the Florentine gilds do not appear in any record prior to 1150, when the *Calimala*, which Dr. Doren regards as representing the as yet undifferentiated class of wholesale merchants (dealing mainly in imported cloth) was entrusted with the

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care of the fabric of S. Giovane. In 1184 the consuls of the *Calimala* were called into counsel respecting a treaty with Lucca; a little later a group of crafts are mentioned in a similar connection and by the turn of the century the exchangers, the notaries, the mercers, the physicians and druggists and the woolmen emerge as separate organizations of the mercantile class, and these with the *Calimala* and the skinners make up the seven *arti maggiori* of Florence.

It is a noteworthy fact, established by Dr. Beaven's researches on the aldermen of London, that the greater companies of London in the fourteenth century were likewise seven in number and represented an almost identical set of occupations, the absence of the notaries from the London list and of the vintners from the Florentine list being susceptible of a ready explanation. Among the *arti maggiori* the *Calimala* long retained the highest place in civic dignity, but it was gradually surpassed in economic importance by the *Arte di Lana* and the *Arte di Seta*, a change significant of the transition in Florence from a predominantly commercial to a predominantly industrial policy.

With this broad and central aspect of Florentine economic history, however, Dr. Doren had dealt very fully in his previous volume. The chief interest of the present work lies in its exhaustive study of the internal organization of the gilds, the original variety of which was subsequently complicated by continual adjustments to the ever-changing conditions of the most versatile of communities. The recognition in 1289 of 21 gilds as the sole channels of citizenship had the apparent effect of transforming a set of growing social organisms into a rigid political structure; but the actual result was that the forces of social and economic fermentation which might otherwise have produced new forms of organization were compelled to remodel the old forms within the limits of which they were confined by the civic constitution. Within the groups of trades which had thus received corporate recognition for electoral and administrative purposes, as new trades were added to the group and as the original trades entered a new phase of development, the social and economic center of gravity was constantly shifting. The mercers gild, for example, had at first consisted of the silk manufacturers and the retailers of cloth. With these in the first half of the fourteenth century were incorporated the goldsmiths and a number of inferior crafts such as the coverlet-makers and the matrass-makers, the members of which held a secondary rank in the gild, paying a smaller entrance fee and enjoying only restricted rights. Later on, however, as capital came to be applied to all these industries, the larger merchants and employers connected with them were placed on a level with the cloth dealers and

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silk manufacturers and formed a third section of the ruling body, whilst the lower ranks of the gild were occupied by the smaller masters and shopkeepers of all the trades and by the workers who had no active share in the organization. The nature of this internal development varied very widely according as the gild consisted of a loose federation of disconnected trades, or of a series of closely related branches of industry capable of a high degree of integration.

But these considerations are far from exhausting the complication of Florentine gild-structure. The traders and craftsmen in the suburbs, in the territory and in the cities subject to Florentine rule were brought under the jurisdiction and control of the metropolitan gilds in a degree that varied with the conditions of each trade. Moreover it was possible for a citizen to be a member, for economic purposes, of more than one gild; and this course was facilitated by lower entrance fees. By this means and also by the attraction of honorary members the gilds sought to acquire social prestige and thus increase their political influence. The whole picture drawn by Dr. Doren, as far as the fourteenth century is concerned, is that of a highly mobile society, remoulding itself with the help of an extremely flexible organization and with a minimum of pressure from above. Under such circumstances there was bound to be a tacit or an avowed conflict of authorities. The gilds constantly exercised a jurisdiction which the state did not sanction or even distinctly prohibited, and their several powers tended to develop and to require readjustment. The gradual rise, to meet this and other needs, of the *Mercanzia*, in connection with the five great mercantile gilds, and its transformation during the fifteenth century into an organ of the state are among the most interesting features of Florentine history.

In this and in other cases Dr. Doren has much to relate that seems unique in gild history. In its highly advanced economic development, its freedom from restrictions (as to apprenticeship *etc.*), its finished technique of finance and commercial law, its elaborately representative forms of administration, and in a great variety of interesting details, the gild system of Florence is clearly distinguished from that of the mediæval cities of Germany, Flanders and England. But in the broad outlines of underlying social structure there is perhaps more similarity than Dr. Doren seems disposed to admit. At any rate that is the impression that emerges from a comparison of the gilds of Florence with those of London. The truth is that Dr. Doren has set a new standard of scholarship in his subject. Equally thorough methods applied to the gilds of other cities will probably yield many analogous results.

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Die Besteuerung des Waldes. By HEINRICH WEBER. Frankfurt a. M., J. D. Sauerländer's Verlag, 1909.—x, 555 pp.

The Germans have gone so far in the development of scientific forestry, as well as in the production of economic literature, that there is a natural tendency to assume that they at least must have solved the problem of forest taxation. Such an assumption is by no means correct. That the United States is not the only country with a forest-taxation problem on its hands is shown by the vigorous discussion of this question which has been carried on of late in the German forestry journals. In this discussion leading German foresters have severely criticized their own tax system and have disagreed with each other on fundamental matters of principle as well as on practical questions of administration. Among the leaders in this discussion have been Professor Endres of the University of Munich, whose previous writings are summed up in a chapter on taxation in his recent *Handbuch der Forstpolitik*,[1] and Dr. Weber, the author of the volume under review. His is the first book devoted wholly to the subject of forest taxation. The treatment, both theoretical and practical, is limited to German conditions and to the discussion of German legislation. Aside from this restriction, the work evidently aims to give a complete and exhaustive treatment of the whole subject of forest taxation.

Forests in Germany are subject to three different taxes: the income tax (*Einkommensteuer*), the ground tax (*Grundsteuer*) and the property tax (*Vermögensteuer*). The several states differ in their selection of one or more of these taxes. As a rule, the general progressive income tax is the basis of the system, supplemented by the property tax or the ground tax or both. The ground tax is based on the average yield, as determined by the *Kadaster*, whereas the property tax is based, so far as possible, on the market value. The distinction between these taxes is neither logical nor consistent; it is due to historical causes. Very few states employ both taxes. The income tax is coming to occupy a more and more important place, while the ground tax is largely obsolete and is decaying as a state tax. Its place is being taken by the property tax, which serves as a supplementary tax to secure the heavier taxation of funded incomes and the taxation of certain kinds of property which yield only a small income or no income at all. Dr. Weber treats these forms of taxation separately, giving for each a discussion of the underlying principles, a critical account of the way in which these

[1] Berlin, Verlag von Julius Springer, 1905.

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principles are applied in legislation, in official administrative instructions and in court decisions, and a synopsis of the legislation of each of the German states. A great deal of attention is given to the writings of Dr. Endres, with whom the author finds himself in almost continuous disagreement.

The author's main thesis with respect to the income tax is as follows. The income from forestry should be defined as consisting of the value of all uses which the owner can derive from the forest within a given period (as a year) without reducing the value of the forest below its value at the beginning of the period. This obviously includes the value of all forest products, whether sold or used directly by the owner, and in addition any increase in the value of the forest itself. The simplest method, theoretically, of ascertaining the year's income from a forest is to take an inventory at the beginning and at the end of the tax year. The amount by which the latter value exceeds the former is the year's increase in value. To this is added the value of all products taken from the forest during the year. The result is the year's income from the forest, in the economic sense, and also for purposes of taxation. In case the two inventories show a decrease in value, as often happens, this decrease is *negative* income and is to be deducted from the forest products of the year; the remainder shows the true income. In brief, the annual growth in value of the forest (*Wertzuwachs*) is the true income and should be the basis of the income tax. Income, as thus defined, is to be distinguished from the capital or "income-source" (*Vermögen*, *Einkommensquelle*). The year's increase in value is the income, regardless whether more or less than this is actually used. If more than the year's growth is used, then capital has been used; if less, the year's growth is nevertheless income, part of which is saved and added to the capital and is hereafter to be regarded as capital.

In none of the German states does actual legislation follow our author's concept of income or does it attempt to apply consistently his distinction between income and capital. Most of the laws incline to regard all actual uses of forest products as income. A few states, as Prussia, attempt to limit income to "ordinary" uses, treating "extraordinary" uses as encroachments on the capital and therefore not income. Weber is severe in his criticism of the laws, of their administration and of their interpretation by the courts, particularly in Prussia.

Dr. Endres, on the other hand, agrees with the principle on which the German income-tax laws are in the main constructed. He holds that all the actual receipts from forestry are to be regarded as income.

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The only exceptions are that cuttings caused by natural calamities (as by wind, snow *etc.*) are not income, and, further, that the proceeds from the sale of the whole forest (both land and trees) are not income but a change in the form of capital, whereas the proceeds from the sale of the trees alone would be income. This is an application of the principle found in the laws that income must come from a definite, permanent "income source."

Certain questions of principle here stand out clearly defined. First of all we recognize that Weber has made the familiar mistake of regarding savings as income. Endres is here more nearly in harmony with economic principles. Weber claims that his idea of income merely puts forestry on a par with a savings-bank account, whose annual increase is taxed as income. But this is simply because the savings-bank account also is incorrectly taxed. Endres tries to defend the taxation of the annual increase in a savings-bank account, while taxing only the actual receipts from forestry, on the ground that the former may be used if the owner desires, while the growth of the forest must be left unused till the trees are ripe. But this is not a valid distinction. As Weber shows, the forest owner also may use the year's growth by selling the forest or borrowing money on the security of the forest.

While Endres and the German lawmakers are generally more nearly correct, in regarding as income the actual receipts or uses from the forest, neither has carried out this idea consistently. For instance, the Prussian law, after defining income as above, tries to distinguish between "ordinary" and "extraordinary" uses or proceeds, calling the former income, the latter capital. Weber himself shows clearly that these two principles are contradictory.

Endres, on the other hand, is forced into an untenable position when he declares that the proceeds from the sale of the entire stand of timber are to be regarded as income, whereas the proceeds of the sale of the whole forest (land and trees) are capital. Weber shows clearly that the former is just as much capital as the latter. Correctly, of course, both receipts are income, not capital at all.

The ground tax is intended to be a tax on the average net yield of the forest, assuming ordinary conditions and the usual kind of management. As to the theory of this tax, the central proposition of Dr. Weber is that the yield should in all cases be the total net "forest rent" (*Waldrente*), which thus includes the interest on the capital in the form of standing timber, as well as the interest on the land. This is practically equal to the annual increase in value (*Wertzuwachs*). Endres

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had insisted that this method was correct only for those forests which produce a sustained annual yield. For forests producing an intermittent yield he would use as the taxable annual yield only the soil rent (*Bodenrente*), *i. e.*, the interest on the expectation-value at the beginning of the rotation period. This means, of course, that the interest on the growing timber is not included in the taxable yield. Endres believes that taxation of this yield is equivalent to the taxation of the annual yield of the sustained-yield forest. Weber, on the other hand, would define the yield in this case, as well as in the forest with an annual sustained yield, as the annual increase in value, claiming that it is inconsistent to treat the two kinds of management differently. The laws generally require the taxation of the average annual yield, *i. e.*, the final yield divided by the number of years in the rotation period; and Weber accepts this as being approximately equivalent to taxation of the annual growth.

The point at issue is a fundamental one. Weber's method means a very much heavier taxation of the intermittent forest than that advocated by Endres. Weber points out correctly an important error in Endres's argument: in comparing the two kinds of forests he takes the intermittent forest at the date when the trees were first planted, the sustained forest already full grown and furnishing an annual yield. Endres's method of reckoning the yield of the intermittent forest is entirely correct, if the regular annual tax begins at the time the forest is planted; but if we begin taxing the sustained forest also at the date of its first planting, its yield will have to be reckoned in exactly the same way. Endres's method will not produce a correct result if the taxation of the intermittent forest begins at any date except the time of planting. Weber is therefore justified in denying the correctness of the separate treatment of the two kinds of management. His own method, however, of reckoning the yield as equal to the annual growth, or the average annual yield, is open to exactly the same objection as his plan of reckoning forest income. Here again we are taxing savings as though they were actual yields available for use, and this plan means a relatively heavier taxation of the forest bearing an intermittent yield.

In the case of the property tax we find the same disagreement between Weber and Endres. In the case of the forest with a sustained annual yield, Endres would consider the total value of the forest as the taxable property; but in case of the intermittent forest, he would tax as property only the value of the soil. Weber would tax the total value of the forest in both cases, this value being periodically deter-

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mined. The principles here involved are the same that have been discussed above in connection with the yield tax.[1] Apart from the matter of principle, however, the question is here largely one of interpretation of the German property-tax law.

The value of this book, at least to students outside of Germany, would have been increased if the author had included some statistical material showing the actual amount of taxes paid by the German forests, both absolutely and in proportion to their income and capital values; the proceeds received by the several governments from forest-taxation; the relative burdens of taxation upon forests as compared with other kinds of wealth or other business enterprises, and so on. The omission of these facts, however, cannot fairly be called a defect, since they probably lay outside the scope of the author's plan.

Dr. Weber's general attitude is one of fairness and impartiality. He wishes to have forests taxed equitably on the same basis as other kinds of wealth or business. He emphatically opposes the granting of special favors to forests by way of lower taxation, on whatever grounds urged. If the government wishes to encourage forestry, this should be done in some other way than by favors in taxation. This attitude seems to the reviewer entirely correct.

While this book will of course not appeal to a large audience outside of Germany, all students who are interested in the problem of forest taxation, especially on its theoretical side, will recognize it as clearly the most important contribution that has yet been made to the subject.

FRED ROGERS FAIRCHILD.

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Theorie de l'impôt progressif. By LOUIS SURET. Paris, Felix Alcan, 1910.—775 pp.

In a ponderous tome of nearly eight hundred pages, M. Suret has brought together with great labor the definitions and opinions of many writers of many nationalities. He has set forth a century's views and theories regarding progressive taxation. He has discovered that there is great variation in definitions and in terminology, and that it is not always the same thing that passes under the same name. After reducing the definitions which he has collected to four classes, he maintains that, in order to reach any conclusion regarding the laying of taxes, we must resort to graphics. Of the advantages of this method, he says:

[1] *Cf.* Fairchild, "The Economic Problem of Forest Taxation," *Yale Review*, February, 1909.

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The chief cause of all these complications is perhaps the prejudice entertained by many economists as regards graphics; and yet, if there be occasion to put a long array of statistics into a form which is easily grasped or to throw light on fiscal tariffs of great complexity, this method would seem to be unexceptionable [page 33.].

Concerning the difficulty of framing any satisfactory theory of progressive taxation, he says:

> The extreme complexity of social life seems to be incompatible with the simplicity of theory, and thus the doctrinal notion of progressive taxation . . . does not agree with existing facts. The great majority of taxes consist, from the point of view of rate, of a combination of proportional progressive and regressive schedules, arbitrarily arranged according to the fancy of the lawmakers. And, curious as this state of things is, its complexity is further increased by two facts: first, that a given tax which may be progressive as a whole when compared with the thing taxed, is not necessarily progressive when compared with the income or property of the individual taxpayer; and second, that the problem of shifting and incidence is involved—a problem so difficult that many have declared it insoluble [pages 55, 56].

Accordingly the author does not endeavor to solve this problem. Moreover he believes, and he endeavors to show, that there is no rule, ethical or non-ethical, which justifies the collection of a tax on the basis of any theory of progressive taxation. Every theory has so many possible variations, occasioned by economic conditions, character of the ruling class, false sentiment and pseudo-justice, that scientific analysis should dominate and determine legislation. If position in the work is to be regarded as a criterion of importance, the doctrines of Loria may be said to have unusual standing in the author's estimation; but, like the other theories examined, Loria's doctrine of class legislation fails to furnish the rule for which the author is seeking. To him the importance of class legislation and the attempts of the powerful class to control tax laws lies in the opportunity which it affords him to set aside the justice theory and to substitute the graphic method of dealing with tax proposals. Rejecting all theories, then, M. Suret confines himself, as he says, to the more modest task of indicating the steps that should be taken to test the wisdom of any existing or proposed tax. He is a special pleader for the use of a particular method in dealing with facts. It is essential, of course, that there should be some basis on which facts are to be arranged and some point of view from which a plan for legislation may be formulated. M. Suret's con-

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clusion, however, is subject to the same criticisms which he directs against many of the theories which he examines. No scheme of taxation is ideal, nor can any such scheme be devised; but, in the opinion of the reviewer, the law of diminishing utility has enough standing to justify a minimum exemption and a progressive tax.

The book is too large. In justice to the author it should indeed be noted that of his 775 pages 84 are devoted to bibliography and 29 to index and charts. The text itself, however, has been expanded by criticism, often sharp but not always penetrating. Orderly presentation and criticism of other men's theories has its value; it is a form of investigation that has come more and more into vogue; but in the matter of progressive taxation there is greater need of a program; and a program must rest upon something more constructive than a method of criticism. In view of the conclusion of the work, the author can not be altogether freed from the charge of over-emphasizing the method of treatment of his problem as compared with its analysis.

FRANK L. MCVEY.

UNIVERSITY OF NORTH DAKOTA.

Income Taxation: Methods and Results in Various Countries. By K. K. KENNAN. Milwaukee, Burdick and Allen, 1910.—347 pp.

This should prove a very useful reference book. It gives for all countries the main facts concerning former and existing income taxes. It offers no discussion of the theory of income taxes, but the results of each tax are summarized and the opinions of officials and scholars thereon are often quoted. The definitions given in the first chapter are very brief, but they seem to contain all that is necessary to understand the rest of the book.

The book will be very useful to editors and to scholars who want to have at hand an outline of the income taxes which have been and are being collected in different countries. Counting separately the different states comprised in the federal governments of Germany and the United States, but not counting separately the Swiss cantons (for which the results are merely tabulated), there are over eighty different governments, large and small, whose experience with income taxes is reviewed.

While the statements for the several countries are so condensed as to bring them all within about 340 large octavo pages, yet they embrace about all that is necessary to know for ordinary purposes. The author has also been successful in the apportionment of his space, giving, for example, seventeen pages to England and twenty-one to Prussia, while countries of lesser importance are given but little space.

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The history of the two federal income taxes in the United States and of that in the Southern Confederacy is gone into in considerable detail, and the action thus far taken by the several states in regard to the proposed income-tax amendment to the constitution is recorded in full. The author has not overlooked those cases where a series of taxes are combined into a virtual income tax, nor does he hesitate to include some taxes which are income taxes in appearance only, like the recent corporation tax of the United States. Where foreign taxes are referred to, any amounts of income or rates mentioned are usually given in foreign money, but with the equivalent in American money. This is a useful feature for American readers.

The work has been done with accuracy and with such care that to call attention to any of the slight errors discovered would be almost hypercritical. In condensing so much material into so small a space it is almost inevitable that some of the modifying conditions should be omitted and that some statements should be made which are too broad or too general. But such instances seem too few to lessen the usefulness of the book. Moreover, in handling such a mass of material, legal and statistical, it seems to be humanly impossible to avoid an occasional slip. One may be mentioned, to show how unimportant the errors are rather than by way of criticism. Thus on page 64 it is stated that the British income tax is regressive in its first grade. This misstatement arises from an error in computing the rate on the entire income for a tax rate of one shilling per pound on the excess over £160 in an income of £161. That rate is of course 0.31 per cent, not 5 per cent as given. But the chart in Appendix C shows the digressive character of this tax correctly. Here and there are similar slight errors, but they are usually in the illustrative computations offered, and the reader can readily correct them for himself. None that has been found is even as important as the insignificant one cited above.

One interesting feature of the book is that it appears to have been compiled mainly from the reports of the British and American consular officers and from books, essays and the like published in this country. A number of handbooks in foreign languages have been used, but it is a little surprising to note, for example, that the voluminous records in Schanz's *Finanz-Archiv* have not been referred to.

As the book is so comprehensive, and, so far as the reviewer can judge, reasonably accurate, it should prove a very acceptable source of information on a subject of immediate general interest.

CARL C. PLEHN.

UNIVERSITY OF CALIFORNIA.

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Modern Accounting. By HENRY RAND HATFIELD. New York, D. Appleton & Company, 1909.—357 pp.

Professor Hatfield quotes with approval (page 33) Rehm's statement that the "principle of truthfulness in accounting is only relative and limited." The frank recognition of this fact, a viewpoint maintained throughout the book, is refreshing, as writers and even men of business too generally look upon accounting as being, if not an exact science, at least approximately so. So far from being an exact science, accounting is, in its best estate, only an honest expression of mixed facts and opinion, the latter being founded upon more or less extended experience and observation. It may be added that quantitatively the element of opinion preponderates and that frequently self-interest exerts an influence in the formation of opinion.

The book may be divided into three sections, which will be referred to briefly in their order.

Chapters i and ii deal with the underlying principles of bookkeeping. It can scarcely be said that the subject-matter of these chapters is necessary for the purpose of the book or that the method of treatment is wholly satisfactory. These chapters might have been omitted without serious loss, as they serve to involve the reader in a technical discussion which does little to aid toward an understanding of subsequent and more important chapters.

For the average reader the book really begins with chapter iii, "The Balance Sheet," in which the author explains in simple terms the meaning and purpose of the balance sheet and shows a number of typical balance sheets in use in this and foreign countries. This chapter is concise yet comprehensive, and the treatment is lucid and sound. It satisfactorily prepares the way for the more detailed consideration which is given, in subsequent chapters, to the contents of the balance sheet. Among the topics specially considered, in the remaining pages, are "Assets and the Principles of Valuation," to which three chapters are given, "Depreciation," "Capital Stock," "Liabilities," "Profits," "Surplus and Reserves" and "Sinking Funds." This section of the book leaves little to be desired, and it will undoubtedly rank as a leading treatise upon the subject.

It may be doubted if the book is improved by the inclusion of the closing chapters upon "Costs" and other special types of accounts; for lack of space makes it difficult for the author to deal satisfactorily with these rather broad topics. Even including these chapters and the opening chapters on bookkeeping, the volume is, however, still one of moderate size.

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One helpful feature to which attention may be called is that each chapter is fairly self-contained. Necessarily this results in a certain amount of repetition, but upon the whole the plan conforms to the needs of the busy man, and the disadvantages to the more leisurely reader are unimportant.

The author's attitude throughout the book is that of the earnest student and shows extended reading and investigation. Simply as a bibliography of accounting the book would serve a useful purpose. Its value, however, is much broader; and not only as a text-book for students of accounting but as a hand-book for business men and for practicing accountants it must rank among the first books of its class. The author evidently realizes the futility of attempting a dogmatic treatment of a subject containing so few fixed principles and has wisely resorted to an assembling of legal decisions and of accounting opinions to illustrate the points under discussion. He is modest in expressing his own views; but when it seems desirable to state them he sets them forth in clear and convincing fashion.

The book is especially to be commended to all those who have in any manner to deal with accounting as a means of corporate regulation. A careful study of its contents would add wisdom to the orders and decisions of many commissions and other regulative bodies.

J. E. STERRETT.

NEW YORK.

Introduction to Political Science. A Treatise on the Origin, Nature, Functions and Organization of the State. By JAMES WILFORD GARNER. New York, American Book Company, 1910.—616 pp.

Teachers and students of political science should be grateful to Professor Garner. He has given them a good text-book. In the case of a science whose very existence is sometimes denied and whose content seems to depend upon the whim of individual writers, no treatment is satisfactory which overlooks the existence of divergent views or the lack of data for properly testing them. We have ceased to believe in oracles; and Mr. Garner, although not always fastidious in selecting his facts, is seldom oracular. He has been at great pains to find out the views of authoritative writers from Aristotle to the men or our own time and has allowed them to state their own conclusions, merely stepping between the combatants occasionally with a short analysis and criticism. Quotations abound; footnotes occupy something like a sixth of the book; and every chapter is prefaced with a bibliography of works in

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English, French, Italian and German. Tribute must be paid to the diligence with which a remarkable store of material has been collected and to the control which is manifested in its arrangement.

It is not surprising that in a book of this scope, errors of judgment and errors of fact should occur; nor does Mr. Garner always hold the balances of justice even. In discussing the origin of the state he devotes twenty-two pages to the social-contract theory and only one page to the matriarchal theory of McLennan and Jenks. Why should we be told so much about the *Leviathan* and nothing about the facts on which the matriarchal theory is based? Surely the actual Bushmen of central Australia are as worthy of attention as the theoretical "state of nature." Similar prejudice is shown in the section which deals with the merits of the unicameral and bicameral legislatures. Mr. Garner seems to believe that the facts are clear, that the question is definitely settled. We are not inclined to put much faith in such a conclusion when it is based on the assertion that the single chamber was given "a fair trial" in Spain and Portugal; nor can we believe that the stormiest period of the French Revolution could give an opportunity for testing the permanent value of any form of government. It is clear that Mr. Garner, like most other opponents of the single chamber, has relied on *a priori* reasoning; he is even under the impression that all but two of the Canadian provinces have bicameral legislatures.

Other criticisms of this kind might be made; there are prepossessions which die hard. But while Mr. Garner sometimes fails to recognize the limitations of our existing knowledge, he has improved on earlier text-books in clearing away a good deal of rubbish and in indicating the sources of his information.

E. M. Sait.

Columbia University.

Le Bulletin mensuel de l' Institut de Sociologie Solvay. Edited by Emile Waxweiler, director of the Institute. Parc Léopold, Brussels.

This periodical will prove itself particularly valuable to workers in the field of social science whose library facilities are insufficient to keep them posted on European publications. Special articles are excluded. In the space thus saved appear, each month, fifteen or more careful reviews and critical discussions of current books and articles which, in the opinion of the editor and his assistants, "contribute most to the explanation of social phenomena, whether they are to be classed primarily under biology, physiology, psychology or sociology, or under

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various special social sciences, such as history, law, political economy and anthropology." The second section of each number is devoted to briefer summaries of less important publications; to special notices of general reviews, bibliographies, the foundation of new societies or institutions of research and similar matters of current interest. This section is followed by short reports of conferences and discussions held by various groups of research workers at the Institute. Reviews and important criticisms are signed, and such notices of books as appear are intended to be without bias. A particularly useful part of each number is the classified index of the two or three hundred chief accessions to the library of the Institute.

The inclusive and detailed character of the *Bulletin* necessarily renders a review of its specific contents impossible. Some idea, however, of the wide range of topics covered in the more important discussions and criticisms may be gained by examining the titles in any single number.[1] Such an examination will also indicate the extraordinary breadth of the field which sociologists are today more or less intensively cultivating.

The *Bulletin* meets a need that has long existed. To American readers the notices and discussions of contributions to social science made in this country are not only gratifying but very useful in helping us to see ourselves as others see us. That the publication is a monthly and yet succeeds in maintaining a high level of excellence is but another indication of how important a place in the learned world the scientific study of society is gaining.

A. A. TENNEY.

COLUMBIA UNIVERSITY.

[1] In the first section of the *Bulletin* for February, 1911, for example, are the following titles: The organization of social life among termites. The adaptation of mentally abnormal individuals to society. The influence of the social environment upon the lower classes in great cities. The influence of "conventionality" in the appreciation of works of art. Why war, from the point of view of the psychology of conflict, is becoming less destructive of human life in spite of development in armaments. Group organization on the basis of common interests. The rôle of personal names in primitive organization. The conditions determining the modification of the technique of a primitive people, when influenced by contact with a semi-civilized population. The determination by environment of the direction of technical invention. The evolution of ideas which sustain classes and the social hierarchy. Conscious and unconscious modes of transmitting rituals. The function of human instinct and that of the social environment in the development of morals. A sociological interpretation of a new jurisprudence. On the sociological conception of law. Geography and sociology. Certain applications of the comparative method in the history of art.

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RECORD OF POLITICAL EVENTS

[From November 8, 1910, to May 1, 1911]

I. INTERNATIONAL RELATIONS

AMERICAN RELATIONS.—Conferences, begun in Ottawa in November and resumed in Washington two months later, resulted in the conclusion of a **reciprocal trade** agreement between **Canada** and the **United States.** It took the form of a note from the two Canadian ministers who conducted the negotiations for their government, setting forth their understanding of the terms, and a note from the American secretary of State accepting their interpretation. These documents were submitted to the legislative bodies of both countries on January 26 for ratification by appropriate legislation (see *infra*, pp. 355, 356 and 372). The agreement places upon the free list 116 articles, including all kinds of grain, cattle and all other live animals, fish, potatoes and other vegetables, dairy products, eggs, hay, fresh fruit, rough timber, tin plate, wire and cottonseed oil. The duties collected on these commodities in the last fiscal year amounted to $1,476,000 in the case of Canada and $4,236,000 in the case of the United States. The agreement also provides for a reduction of the duties on about 450 articles, including meats, farm machinery, cutlery, building stone, clocks, matches, automobiles, lumber, coal and cement. Taking the figures of last year, the reductions would amount to about $1,000,000 in the case of Canada and $600,000 in the case of the United States. The agreement affects 91 per cent of the American import trade with Canada.—In view of the **disturbances in Mexico** the American forces on the frontier were somewhat strengthened early in February. On March 7 over 20,000 men were ordered to San Antonio and other points, while a squadron of four fast cruisers was sent to Galveston. This extraordinary mobilization was stated to be for the purpose of field instruction. It developed later, however, that the president wished to prevent the violation of American neutrality and also to protect American interests in Mexico if occasion should demand it. Assurances were given to President Diaz that the military movement had no significance which "should cause concern" to Mexico. The presence of this army on the frontier, however, gave undue prominence to a controversy occasioned by the capture of two Americans by Mexican federal troops. The State Department demanded their surrender, as having been taken on American soil; this the Mexican government refused, asserting that they had been captured on Mexican soil while aiding the insurgents. During a battle at Agua Prieta on April 13 three Americans were killed and a number wounded at Douglas, Arizona, by stray bullets. Strong representations were thereupon made to both

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federalists and insurgents that battles must not be fought so close to the boundary line that the lives and property of Americans would be endangered.—President Taft's suggestion that a treaty should be concluded between **Great Britain** and the United States providing for the arbitration of all disputes was warmly endorsed by Sir Edward Grey, the British foreign secretary, and by A. J. Balfour, leader of the opposition. Negotiations between the two governments were begun in April.—A new treaty with **Japan** was ratified by the United States Senate on February 24. Along with the treaty went a note from the Japanese ambassador expressly setting forth that the present arrangement whereby Japan herself restricts and controls the emigration of laborers to the United States would be continued under the new treaty.—The republics of **Haiti** and **San Domingo** were on the verge of an armed conflict in January, as a result of a boundary dispute of long standing, but a temporary settlement was reached through the good offices of the United States.—In January the United States protested to **Guatemala** against the alleged support of revolutionary movements in Honduras.—On February 18 Manuel Bonilla, leader of the **Honduras** revolutionists, Lee Christmas, his aide, and two others were indicted at New Orleans for violation of the neutrality laws in connection with a filibustering expedition of the gunboat "Hornet." On February 3, at the request of President Davila, President Taft tendered the good offices of the United States in restoring peace; and as a result an armistice was arranged between the government and the revolutionists. In the peace negotiations, which reached a successful conclusion on March 4, Thomas C. Dawson represented the United States. At the close of this RECORD a convention arranging for a loan to the new government awaited action by the Senate at Washington.—On December 31 the United States formally recognized the Estrada government in **Nicaragua**. In January an American adviser was appointed to assist in putting the finances in order.—The government of **Panama** made a special effort in December to establish friendly relations with **Colombia**, but Dr. Carlos Mendoza, its special envoy to Bogota, was unable to negotiate a satisfactory treaty.—Diplomatic relations were resumed in December between **Bolivia** and **Argentina**, the former acknowledging that Alcorta's decision in the Bolivia-Peru boundary dispute was non-partisan (see RECORD of December, 1909, p. 733). In April a protocol was signed between representatives of Bolivia and **Peru** for the peaceful settling of all outstanding difficulties, differences of opinion being submitted to the Hague Court.—The frontier dispute between Peru and **Ecuador** (see last RECORD, p. 728) remained unsettled, the latter country refusing to consider the suggestion of the United States, Brazil and Argentina that the matter be referred to the Hague Tribunal, and the two governments continued to make counter charges of invasion of their boundaries.—By way of protest against the proposed lease of the Galapagos Islands to the United States for a term of ninety-nine years, mobs hooted the president of Ecuador and stoned his house at Guayaquil on January 27.

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The plan was therefore abandoned.—The close commercial connection between **Brazil** and Europe was emphasized in January by the completion of a new cable, financed by the **German** government, linking Pernambuco with Cologne by way of Liberia and the Canary Islands.

EUROPEAN RELATIONS.—In the European press there was much comment concerning alleged signs of weakness in both the Triple Alliance and the Triple *Entente*. On the one side, **Italy** was said to be irritated by the refusal of the German and Austrian emperors to attend in person the jubilee of Italian unification (see *infra*, p. 376); and the mayor of Rome made the situation worse by naming a street after an Irredentist fanatic who tried to assassinate the Austrian ruler in 1882. On the other side, some uneasiness was caused in France and Great Britain by the meeting of the **Russian** and **German** emperors and the announcement of a friendly settlement of points of difference between the German and Russian governments. That the policies of Germany and **Austria-Hungary** were in harmony was testified, on the occasion of Emperor William's journey in March to Corfu, by his cordial meeting with the Emperor Francis Joseph at Vienna and Schönbrunn and with the Archduke Francis Ferdinand at sea.—Generally unfavorable criticism was called forth in the non-German newspapers by the speech of Herr von Bethmann-Hollweg in the Reichstag on March 30, in which he opposed the American, British and French proposals for disarmament and compulsory arbitration.—The Turkish government declared in November that further attempts on the part of the **Cretans** to sever their connection with the empire would be sternly repressed.—The Montenegrin government on April 1 called the attention of the Powers to the serious situation occasioned by the **Albanian** revolt and the influx of Albanian refugees from Turkey into Montenegro. Similar movements of Albanian refugees gave rise to disorders on the Greek frontier.—Joint delimitation commissions were appointed to fix the boundaries between Turkey and Bulgaria and Turkey and Greece, respectively.—The **Norwegian** press has been in a ferment on account of a Russian plan to establish a strong naval base on the island of Kildin, in the Arctic Ocean near the point where it joins the Atlantic.

ASIATIC RELATIONS.—Early in February the relations between **Russia** and **China** became greatly strained on account of difficulties in renewing the treaty of 1881, which was about to expire. The Russian demands embraced (1) the right to impose unlimited import and export duties in specified regions; (2) guarantee of the extra-territorial rights of Russians in China, and of the hearing of legal suits involving Russians and Chinese by mixed tribunals; (3) free trade in Manchuria and the extra-wall provinces; (4) establishment of three new Russian consulates; (5) manifestation of due respect to all Russian consuls on the part of local authorities; (6) the right of Russians to acquire real estate in Manchuria and the extra-wall provinces. The Chinese government set up counter-claims for indemnity on account of expulsion of Chinese inhabitants from towns on the

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east side of the Amur and on account of destruction of Chinese property during the Russo-Japanese War. The Russian government delivered an ultimatum on March 13, threatening armed force; and a week later China agreed to substantially all the Russian demands.—It was reported the same day that **Japan** was about to press several demands upon China, including the extension of the Port Arthur and Dalny lease, full control of the Dairen customs, an increase in the number of consuls in Manchuria and the substitution of Japanese soldiers for Chinese police in the Antung-Mukden railway zone. It was also affirmed that the contention that China is unable to suppress the bandits in Manchuria would serve as an excuse for an increase of Japanese and Russian military forces throughout that region.—A new commercial treaty between Japan and Great Britain was signed at London on April 3. The former country had given notice on February 20 of her intention to renounce the special Canadian trade convention of 1905.—The assassination of the **Persian** minister of finance on February 10 by two Russian subjects served to increase Persian hostility to the occupation of the northern provinces by Russian troops.—A convention was concluded at Potsdam on January 13 between Russia and Germany concerning the **Bagdad Railway**. The former undertook not to oppose the project but rather to guarantee proper connections through Persian territory. The treaty rights of Great Britain in the matter were expressly safeguarded.

AFRICAN RELATIONS.—In **Morocco** chronic conditions of civil war, tribal brigandage and lack of protection to foreigners have occasioned energetic action on the part of Spain and France. In April, Spanish reinforcements were pushed into the Melilla district, and a French army of 5000 was despatched to Fez, where Sultan Mulai Hafid was besieged by a new pretender, Malai Ismail, and the Berber forces. Meanwhile, the French have completed the final link in their chain of railways connecting the Gulf of Tunis with the Moroccan boundary, thereby facilitating the "peaceful penetration" of the Shereefian empire. It is expected that in the near future the railway will be extended to Tangier, making that place a great port of northern Africa.—The boundary disputes which **Liberia** had with France and with Great Britain were adjusted in January. Throughout March and April negotiations proceeded with those countries and the United States in order to solve financial difficulties.

II. THE UNITED STATES

THE ADMINISTRATION.—Early in November **President Taft** visited Panama and examined the construction works in the canal zone. Dining with President Arosemena on November 16, he declared that the American people would feel utterly dishonored in annexing the republic of Panama unless a situation arose which left them no alternative; and such a situation, he was confident, would never arise. Speaking in Washington a month later and in New York on January 21 he urged the fortification of the canal on the ground that neutralization would not ensure its safety in

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time of war. In February he addressed large audiences in Ohio, Illinois and Indiana, explaining the significance and advantages of the reciprocity agreement with Canada. Speaking before a gathering of newspaper publishers in New York on April 28 he emphatically condemned as groundless the annexation talk which the agreement had occasioned.—In his annual report, submitted in December, the secretary of **Agriculture** stated that the middlemen and not the farmers were responsible for the high cost of food-stuffs and he advocated a combined system of farmers' and consumers' coöperative societies. The value of agricultural products in 1910 was about $9,000,000,000.—In December the secretary of the **Interior** reported that existing withdrawals of coal, phosphate, oil and water-power lands aggregated 91,000,000 acres. He advocated the leasing of oil and gas lands, but opposed such a policy with respect to coal lands. In January a special board of army engineers made recommendations as to the distribution of the $20,000,000 expenditure authorized by Congress (see last RECORD, p. 733) among various reclamation projects. In the same month 143,380 acres of coal lands in Wyoming were withdrawn from all forms of disposition; in April, 1,576,000 acres in New Mexico were withdrawn from entry pending a field examination and a classification as to coal deposits. Early in March a federal grand jury in Detroit returned seven indictments charging conspiracy to defraud the government of 48,000 acres of Alaskan coal lands by means of false entries; shortly afterwards similar indictments were brought against nine persons in Chicago relating to entries upon 10,000 acres. On April 24 the United States district court at Portland, Oregon, rendered decision in favor of the government in a suit to recover from the Southern Pacific railroad about 2,000,000 acres of land valued at $75,000,000. The court found that the railroad had violated the terms of the grant which required sale to *bona fide* settlers at a low price and in limited tracts. In December another suit was filed against the same company for the recovery of 6000 acres of oil lands on the ground that the company had patented them wrongfully.—The **Pinchot-Ballinger** controversy ended on March 7 with the resignation of the secretary of the Interior. In accepting the resignation the president declared that Mr. Ballinger's enemies had entered into "one of the most unscrupulous conspiracies for the defamation of character that history can show," and that he parted with the secretary's services with the greatest reluctance and only because it would not be justifiable to ask further sacrifices of him.—New **customs frauds** were discovered in December. Grand juries in New Orleans and San Francisco found evidence of false weighing and improper grading of sugar. A firm of art dealers in New York was accused of defrauding the government out of some $2,000,000 by undervaluations. In connection with woolen importations at the same port more than $500,000 was deposited with the treasury for civil settlements, and property to the value of more than $1,000,000 was seized by the government. Two arrests were made in San Francisco on the charge of undervaluing teas and oriental goods; officials

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estimated the loss in duties at $200,000. Richard Parr, who was instrumental in bringing to light the frauds of the American Sugar Refining Company (see RECORD of June, 1909, p. 361) received $100,000 from the Treasury on January 1.—The report of the **Post Office Department** showed a deficit of $5,881,481 for the fiscal year, which was less than the deficit of the preceding year by $11,500,000. For the following six months the deficit was only $31,000. This improvement in the finances was made in spite of a considerable extension of the service, entailing the employment of 3600 additional men at salaries aggregating over $2,000,000. Increases in the salaries of clerks and carriers added over $3,225,000 to the expenses. Secretary Hitchcock recommended the extension of the rural delivery routes, the establishment of a parcels-post system on the rural delivery routes, and an increase of the second-class rates on the advertising pages of magazines. Concession was made in February to the demands of western railway mail clerks by fixing a six-hour day on lines where the work is continuously heavy for six days in the week. A general reorganization of the railway service was effected at the close of March. In November and December many arrests were made in connection with swindling operations conducted through the mails. One offender, who made no defence, was sentenced to two years imprisonment.—In compliance with a House resolution, the secretary of **War** prepared in December a report showing in detail that the United States was not prepared to repel invasion by any first-class power. Though not released for publication and immediately suppressed by the president, this report was printed in certain newspapers and provoked an alarmist discussion. This the president attempted to dispel in a public utterance, condemning the proposal to increase the regular army to 400,000 men, on the grounds that war with any power was most unlikely and that the navy and the coast defences would afford adequate protection.—Commander W. S. Sims was publicly reprimanded by the secretary of the **Navy** for making an indiscreet speech at a London dinner tendered to the officers of the visiting American fleet.—The **Immigration Commission**, after a three-year inquiry, submitted to Congress on December 5 a voluminous report, recommending the restriction of the immigration of unskilled laborers. The restrictive proposals included a reading and writing test, limitation on the numbers arriving at any one port and from any one nation, the exclusion of unmarried unskilled laborers and higher requirements as regards the amount of money in possession of the immigrant at the time of arrival.—According to the twenty-seventh annual report of the **Civil Service Commission**, submitted in March, 5488 additional positions had been classified and brought under the competitive system. The commission recommended the extension of the system to all positions in the postal department and in the navy yards and the adoption of uniform efficiency tests for promotion in all departments.—Among the **appointments** made by the president were: Walter L. Fisher, to be secretary of the Interior; F. W. Lehmann, to be solicitor-general of the United

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States; Charles D. Hilles, assistant secretary of the Treasury, to be secretary to the president; B. H. Meyer and C. C. McChord to be members of the Interstate Commerce Commission; Senator Root, to be a member of the Hague Tribunal; W. W. Rockhill, ambassador to Russia, to be ambassador to Turkey in the place of Oscar Straus, who resigned on account of ill-health; Curtis Guild, Jr., to be ambassador to Russia; Congressman H. S. Boutell, to be minister to Portugal. The resignation of David Jayne Hill, ambassador to Germany, will take effect on July 1. On April 20 the resignation of H. D. Peirce, minister to Norway, was announced.

CONGRESS.—The third session of the Sixty-first Congress began on December 5. In his regular message President Taft expressed the belief that Congress should await the effects of a rigorous enforcement of existing laws before proceeding further in the regulation and restraint of corporations. He advised against any general revision of the tariff, but promised to lay before the next Congress the facts gathered by the Tariff Board respecting particular schedules which might require amendment. He recommended freer trade relations with Canada; the fortification of the Panama canal and the prohibition of interstate railroads from owning or controlling ships plying through the canal; an appropriation to enable the Interstate Commerce Commission to make a valuation of railroads; ship subsidies, especially for vessels plying to South America; a federal incorporation law; a new banking and currency system; an increase in the postal rates on the advertising pages of magazines; the establishment of a parcels post on rural free delivery routes; the acceptance of the naval estimates, including the cost of two battleships; a reduction of the cost of litigation by simplifying procedure and expediting final judgments; a law to regulate the issuing of injunctions without notice; the government of Alaska by a commission to be appointed by the president; a pension system for the retirement of superannuated employees; the leasing for terms not to exceed fifty years of coal and phosphate lands and water-power sites; and economy and efficiency in the government. On January 12 a special message asked for $5,000,000 to begin the fortification of the Panama canal. On January 26 a special message transmitted the text of the trade agreement with Canada and strongly urged its ratification.—As compared with the recommendations of the president the **bills passed** by Congress were very few in number. Appropriations were made for beginning the fortification of the Panama canal, for constructing two battleships of the dreadnought type, for establishing forest reserves in the White Mountains and the Appalachian ranges, and for embassy buildings in foreign countries. An act was passed to codify, revise and amend the laws relating to the **judiciary**. This act abolished the circuit courts, their powers and duties devolving upon the district courts; it also raised the salary of the chief justice to $15,000 and of the associate justices to $14,500.—Many important measures were defeated. A bill embodying the provisions of the **Canadian reciprocity** agreement (see *supra*, p. 349), supported by all but five Democrats and

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opposed by a majority of the Republicans, passed the House in February by a vote of 221 to 92. The insurgent Republicans were almost solidly against it, as discriminating against the farmer and not going far enough in the direction of free trade. The Democratic leader, Champ Clark, enlivened the debate by expressing the belief that all British dominions on the continent would eventually come under the American flag, and Mr. Bennet (Republican, New York) presented a resolution directing the president to open negotiations for the annexation of Canada. The Reciprocity Bill failed to come to a vote in the Senate, although it was known that in this event the president would call an extra session of the newly elected Congress.—A bill to create a permanent bi-partisan **tariff board**, composed of five members appointed by the president for six years, passed the House, 186 to 93, on January 30, only three Republicans opposing it. The Senate adopted amendments to the bill so late in the session that a determined filibuster prevented the conference report from coming to a vote in the House.—In January Senator Borah introduced a resolution providing, by constitutional amendment, for the **direct election of senators.** It was so framed as to leave the qualification of voters in the hands of the state legislatures; and on February 24 Senator Sutherland offered an amendment giving the federal government power to regulate the elections. This was accepted, 50 to 37, only one Democrat voting for it and seven insurgent Republicans voting against it. Four days later the amended resolution failed to obtain the necessary two-thirds majority, the vote being 54 to 33. —The Crumpacker **Reapportionment Bill**, which increased the membership of the House to 433 and empowered the state legislatures to redistrict on the basis of one member for each 211,877 inhabitants, passed the House on February 9 but failed to come to a vote in the Senate.—Among other bills that failed of passage were: the Ship Subsidy Bill, which passed the Senate by the deciding vote of the vice-president, and which authorized the postmaster-general to contract for the carrying of mails to South American ports at the rates paid on Atlantic routes; a Pension Bill, which passed the House and which would have included every man who had been mustered into the Civil War for ninety days; a bill establishing a parcels post on rural free delivery routes; and a bill increasing the postage on the advertising pages of magazines. At the close of the session the House approved the constitution of New Mexico. Coupled with the constitution of Arizona, which aroused opposition by its radical features, the New Mexico constitution failed to receive the approval of the Senate (see *infra*, pp. 360, 361).—Interesting **questions of procedure** were settled in both Houses. In the Senate on December 19 the decision of the vice-president that a paired senator might be counted in making a quorum was put to vote and overruled. On January 9 the House reversed the position which it took in March, 1910 (see RECORD of June, 1910, p. 369). The speaker decided that a resolution amending the rule relative to the discharge of committees was not privileged under the Constitution, and the House, in-

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cluding most of the Democrats, supported this ruling. On January 11, the speaker's refusal to entertain a motion to discharge a committee was overruled, 145 to 126, by a combination of Democrats and insurgent Republicans.—The majority report of the joint committee appointed to investigate the **Pinchot-Ballinger** controversy (see last RECORD, p. 733) was submitted to Congress on December 7, signed by all the Republican members except Mr. Madison of Kansas, an insurgent. It completely exonerated Mr. Ballinger, stating that "no ground whatever has been shown justifying the opinion that he was not a faithful and efficient public officer"; but his policy with respect to the sale of coal lands was indirectly condemned by the recommendation that such lands should be held by the government and leased for limited periods.—The Committee on Privileges and Elections reported to the Senate on December 21 in the **Lorimer case** (see last RECORD, p. 733) to the effect that no evidence had been found convicting the senator of corrupt practices or invalidating his right to his seat. Debate on the case continued for two months. Senator Lorimer spoke for four hours in his own defence. On March 1, by a vote of 46 to 40, the Senate refused to unseat him.—On the call of the president, the Sixty-second Congress met in special session on April 4. The House elected Mr. Champ Clark speaker. It also adopted new rules, under which all committees were to be elected; but by the action of the Democratic caucus the Committee on Ways and Means was empowered to select the members of all other committees. In the Senate the insurgent Republicans, numbering twelve, secured one-fourth of the Republican places in committees.—The president's message dealt exclusively with the subject of **Canadian reciprocity** and urged prompt action. The bill introduced into the House was a transcript of the Republican bill of the previous Congress, with the addition of a clause authorizing and requesting the president to extend the scope of the agreement by further negotiation. It was passed on April 21 by a vote of 264 to 80, only ten Democrats opposing it.—A **Farmers' Free List Bill** was then reported. It placed on the free list agricultural implements, bagging for cotton, hoop and band iron, leather, wire for fences, dressed meats, cereals, timber, salt, sewing-machines and other commodities.—A resolution for the **direct election of senators** similar to that introduced in the last Congress was carried through the House on April 13 by a vote of 297 to 15.—A **Publicity Bill**, providing that expenditures made in election campaigns, including primary elections, must be published before the final elections. passed the House unanimously on April 14. A similar bill was introduced in the Senate.—The Lorimer case was brought up again in the Senate, a resolution providing for further investigation of the charges being introduced by Senator La Follette.

THE FEDERAL JUDICIARY.—Among the more important decisions of the **Supreme Court** were the following. The law of the Philippine Commission prohibiting exportation of Philippine silver coin from the islands is not void as depriving the owner of such coin of his property

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therein without due process of law (Ling Su Fan *v.* United States, 218 U. S. 302). The decision of the highest court of California that the state succession tax applies to a surviving wife's share of the community property does not violate the contract, due process or equal protection clauses of the constitution (Moffit *v.* Kelly, 218 U. S. 400). It is not a taking of property without due process of law under the fifth or the fourteenth amendment to require a railroad to erect a bridge for its road over a street in which it has a right of way (Cincinnati, I. and W. Railway Company *v.* Connersville, 218 U. S. 336). A state statute imposing liability on telegraph companies for errors in transmission of dispatches due to negligence is not unconstitutional as a regulation of interstate commerce, neither is it a taking of property without due process of law or a denial of the equal protection of the laws (Western Union Telegraph Company *v.* Commercial Milling Company, 218 U. S. 406). The statute of Congress giving the government the right to appeal to the Supreme Court from judgments sustaining demurrers to indictments or motions to quash them, but not giving the same right to the accused, is not a denial of due process of law or of the equal protection of the laws (U. S. *v.* Heinze, 218 U. S. 532). A Mississippi statute abrogating the fellow-servant rule as to railway employees and making the fact of injury *prima facie* evidence of negligence is not a denial of due process of law or of equal protection of the laws (Mobile J. and K. Company *v.* Turnip Seed, 31 S. C. R. 135). A California statute for the establishment and quieting of title to real estate in case of lost or destroyed records is not a violation of due process (American Land Company *v.* Zeiss, 31 S. C. R. 200). An Alabama statute providing that the refusal to perform labor contracted for without refunding the money or paying for property received shall be *prima facie* evidence of a crime therein defined is unconstitutional as in conflict with the thirteenth amendment (Bailey *v.* Alabama, 219 U. S. 219). A state statute requiring owners to register lands and pay taxes thereon and declaring them forfeit for non-compliance therewith after a judicial proceeding and opportunity to be heard is not a denial of due process of law (Kentucky Union Company *v.* Kentucky, 219 U. S. 140). The Carmack amendment to the Interstate Commerce Act providing that interstate carriers shall be liable for loss to merchandise received for transportation beyond their own lines, the loss occurring beyond their own lines, is not a violation of the due process clause of the fifteenth amendment (Atlantic Coast Line Railway Company *v.* Riverside Mills, 219 U. S. 186). A Missouri statute prohibiting arbitrary deductions from the actual weight or measure of grain and other commodities is a proper exercise of the police power (House *v.* Mayes, 219 U. S. 271). A tax on dealing in futures is not in violation of the due process or equal protection clauses of the fourteenth amendment (Brodnax *v.* Missouri, 219 U. S. 286). A statute imposing an excess liability of twenty-five per cent on all insurance companies which are connected with a tariff association is not a violation of the due process or the equal protection clauses of the fourteenth amendment (Ger-

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man Alliance Insurance Company *v.* Hale, 219 U. S. 307). The New York statute for licensing private bankers is constitutional (Engel *v.* O'Malley, 31 S. C. R. 190). The Oklahoma Bank Guaranty law is constitutional (Noble State Bank *v.* Haskell, 219 U. S. 104). A state statute requiring full train crews is not a violation of due process or a regulation of interstate commerce (Chicago R. I. and P. Railway Company *v.* Arkansas, 31 S. C. R. 275). A state statute prohibiting the wasting of mineral waters is constitutional (Lindsley *v.* Natural Carbonic Gas Company, 31 S. C. R. 336). The federal Corporation Tax law is constitutional as a tax on the privilege of doing business in corporate form (Flint *v.* Stone-Tracy Company, 31 S. C. R. 342). On January 3 the Supreme Court affirmed the decision of the circuit court in the case of the United States against the proprietors of the New York *World* for alleged libelous charges respecting the Panama canal purchase (see RECORD of June, 1910, p. 371).—On April 10 the **Court of Customs Appeals** laid down the principle that, when a tariff concession is made in consideration of a concession, the favored-nation clause in general treaties does not require the same concession to be made without a similar consideration.—On December 12 the **appointment** of Justice Edward Douglass White as Chief Justice of the United States, in succession to Melville Weston Fuller, deceased, was announced. On the same day Judge Willis Van Devanter of Wyoming and Judge Joseph Rucker Lamar of Georgia were appointed associate justices of the Supreme Court; and the following were appointed judges of the new Commerce Court: Martin A. Knapp (for a term of five years), Judge Robert W. Archbald (four years), Judge William H. Hunt (three years), John Emmett Carland (two years) and Judge Julian W. Mack (one year).

STATE AFFAIRS.—At the close of this RECORD the sixteenth or **income-tax amendment** had been ratified by thirty states: Maine, Ohio, Michigan, Indiana, Illinois, Kentucky, Maryland, North Carolina, South Carolina, Alabama, Mississippi, Missouri, Iowa, Wisconsin, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Texas, Colorado, Montana, Idaho, Nevada, California, Oregon, Washington, Tennessee, Arkansas and Georgia. The New Jersey legislature, which was expected to ratify, adjourned without action. In New York the amendment passed the Senate on April 19. In the same month it passed the lower house in Florida, Minnesota and Massachusetts. Ratification by thirty-five states is required.—**Senatorial elections** occasioned deadlocks in several states. On April 12 the Iowa legislature elected W. S. Kenyon, Republican, on the sixty-seventh ballot. On March 2 the Montana legislature elected Henry L. Myers, Democrat, on the seventy-ninth ballot. In New York the Democratic caucus chose as the party candidate William F. Sheehan, who was known to have the support of the leader of Tammany Hall, Charles F. Murphy. Some twenty Democrats, however, refused to go into caucus and by withholding their votes from Sheehan prevented his election. After the sixty-second ballot fourteen of the insurgents agreed to enter a new caucus on

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the understanding that another candidate should be chosen. The choice fell upon Justice O'Gorman; and he received the whole Democratic vote and was elected on March 30. In Tennessee, after a deadlock of three weeks, an independent Democrat, Luther Lea, was chosen on January 23. A peculiar situation arose in West Virginia when the fifteen Republican senators, forming exactly half of the full membership, fled from the state and so prevented the Senate from organizing. On January 23, however, the fugitives returned, having made a compact by which the president of the Senate was to be a Republican and two Democrats were to be elected senators.—The third annual **conference of governors** met at Frankfort, Kentucky, on November 29.—In February the Parks local-option bill passed both houses of the **Alabama** legislature and was signed by the governor. Previous legislation had prohibited the sale of liquor.—The proposed constitution for **Arizona** was ratified on February 9 by a popular vote of 12,000 to 3500. It contains about 15,000 words, provides for the initiative and referendum and for the recall of all elective officers (including judges) and requires of all voters ability to read the constitution in English. —The "grandfather-clause" amendment to the constitution of **Arkansas** passed the legislature in February.—The **California** legislature completed a remarkably fruitful session on March 27. Bills were passed providing for a conservation commission to supervise the granting of water-power sites; limiting the hours of labor for minors; prohibiting the payment of employees by check unless immediately convertible into cash; abrogating in personal injury suits the common-law defences of fellow-servant's negligence and assumption of risk; prohibiting race-track gambling; and adopting the Oregon primary system, under which the party circle and column are eliminated from the ballot and the nomination of judges and school officials is made non-partisan. Two constitutional amendments were adopted for submission to the people: one establishing the initiative and referendum and the recall (applicable even to judges); the other granting the suffrage to women. —A bill extending the local-option area from townships to counties was rejected by the **Illinois** lower house in April, but an attempt to repeal the local-option law altogether was also unsuccessful. The Vermillion county grand jury undertook, late in January, to investigate the buying and selling of votes and, when the state's attorney neglected to question the witnesses closely, dismissed him from attendance. Although the inquiry lasted eight weeks, it resulted in only fourteen indictments for corrupt practices in elections. The jury recommended that traffic in votes should be punished by disfranchisement for five years on the first conviction and for life on the second. A new turn was given to the Lorimer case in January (see last RECORD, p. 735, and *supra*, p. 357) by the appointment of a committee of the state Senate to inquire into the facts regarding the bribery of certain senators who had confessed or been indicted. In February a Chicago newspaper charged that a fund of $100,000 had been raised to secure Lorimer's election. Summoned before the committee in April, the writer

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of the article indicated Edward Hines, a wealthy lumber merchant, as one of those interested in raising the money. Evidence to the same effect was given by other witnesses. On April 26 the Senate ordered three bankers, who had refused to produce certain books before the committee, to appear and show cause why they should not be punished for contempt.—The **Indiana** legislature repealed the county local-option law in January, substituting the township or ward as the unit of option.—In February Governor Carroll of **Iowa** vetoed an "Oregon plan" primary bill, declaring that such a method of electing United States senators was an evasion of the federal Constitution. In the same month a constitutional amendment providing for the initiative and referendum was defeated.—In February the **Kansas** legislature decided to submit to the people an amendment establishing woman suffrage. In the same month the Senate rejected an amendment providing for the initiative, referendum and recall.—In March the **Maine** legislature adopted for submission to the people an amendment abolishing prohibition.—Proposed amendments to the **Michigan** constitution providing for the initiative, referendum and recall passed the lower house by the required two-thirds majority in April but were defeated in the Senate.—In March the legislature of **Nevada** passed, for submission to the people, a constitutional amendment establishing woman suffrage. A law passed in February prohibits intermarriage between white persons and Asiatics.—Urged by Governor Wilson, the **New Jersey** legislature adopted a number of important measures before adjourning in April. Most noteworthy were a Public Utilities Act, a new Primary and Elections Act and a drastic Corrupt Practices Act. Investigations by a special committee of the legislature in January showed that much fraud had been practised in the November elections at Atlantic City; and a grand jury at Camden indicted a number of persons, including a member of the city council, for fraud in the elections.—By a majority of 18,000 the proposed state constitution for **New Mexico** was ratified by the people on January 21. It provides for the referendum but not for the initiative.—The committee appointed to make an exhaustive inquiry into several phases of legislative bribery in **New York** (see last RECORD, p. 736) presented its report to the legislature on February 1. The committee failed to substantiate any of the charges of bribery in connection with the passage of the Hart-Agnew bill of 1908, but the evidence seemed to show that ex-Senator Gardner had lobbied against the measure and had offered one member $100,000 for his vote. It was recommended that the penal law should be changed so as to compel members to report attempts at improper influence. The committee drew attention to abuses in the fire-insurance business and suggested remedies. When brought to trial for attempted bribery, Gardner was acquitted.—A grand jury investigated in December the buying and selling of votes in Adams county, **Ohio**. Largely on the testimony of political workers who turned state's evidence, a third of the voters were indicted. They were afterwards sentenced to small fines and disfranchisement for

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five years. A few persons were also convicted in the neighboring county of Scioto. It was announced on May 1 that detectives had collected evidence which would convict more than twenty members of the Ohio legislature of accepting bribes. A resolution was at once passed by both houses instructing the attorney-general to assist in the preparation of evidence for submission to the grand jury.—The supreme court of **Oklahoma** decided in February that the legislature had power to revoke the provision of the enabling act which made Guthrie the state capital until 1913.—The legislature of **Oregon** adopted a constitutional amendment for woman suffrage which will be submitted to the people at the next election.—Until nearly the end of January the forty-six regular Democrats in the **Tennessee** lower house refused to take their seats and thus to give the quorum necessary for the formal seating of the Fusionist governor-elect.—In February a constitutional amendment was passed by the **Texas** legislature providing for state-wide prohibition. In the same month the governor vetoed a charter for the city of Texarkana because it provided for the initiative, referendum and recall.—In March the **Washington** legislature adopted for submission to the people a constitutional amendment providing for the initiative and referendum. An employers' liability bill was passed, excluding liability insurance companies from the state and leaving the compensation of injured workmen to a state commission. Direct primaries were applied to the nomination of supreme court judges.—A committee of the **Wisconsin** Senate, appointed in 1909 to investigate the nomination of United States Senator Stephenson in the primary election, reported to the governor in January that both nomination and election were void on account of bribery and corrupt practices. It recommended that the findings should be laid before the United States Senate.

MUNICIPAL AFFAIRS.—For the first time in the history of **Cambridge**, Massachusetts, the Democrats secured complete control of the city in March, electing the mayor, principal assessor, the entire board of aldermen and twelve of the twenty-two members of the common council.—In March the direct primary was tested for the first time in **Chicago**, Alderman Merriam being named by the Republicans and Mayor Harrison by the Democrats as candidate for mayor. On April 4 Harrison won his fifth term by a plurality of 17,000. The new commission on vice made its first report to the common council on April 5. It urged persistent repression of the social evil, frequent rotation of policemen, appointment of women officers on the police force, supervision of employment agencies, establishment of municipal dance-halls, physical examination of applicants for marriage licences and much else.—On February 21 George B. Cox, Republican boss of **Cincinnati**, was indicted for perjury. The indictment charged that he testified falsely before a grand jury in 1906, when he denied receiving part of the money paid to county treasurers by banks which received county funds on deposit. A second indictment for perjury was returned against him on March 30.—An Indiana grand jury, after investigating charges of

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corruption in **East Chicago**, returned indictments against thirty persons, including the mayor, chief of police and city clerk.—A woman was elected mayor of **Hunnewell**, Kansas, on April 3.—As the Republican city council of **Mount Vernon**, New York, in order to keep the old Republican officials in power, refused to confirm any of the mayor's nominations, the state legislature passed an act in April giving the mayor an absolute power of appointment. This act was vetoed by the council.—At the close of this RECORD graft investigations in the borough of Queens, **New York City** (see last RECORD, p. 737), had resulted in ninety-six indictments and only two convictions. Many of the indictments were dismissed by the courts. After receiving a protest against a judicial ruling in one of the prosecutions, the mayor announced on April 14 that he would ask the governor to designate a special supreme-court justice to hear these cases. The hearing of charges against Borough President Gresser continues before Commissioner Ordway. A coroner's jury, after investigating a factory fire in which 146 persons lost their lives on March 25, found indictments against the employers because of culpable and criminal negligence in leaving one of the exits locked. The jury found such confusion and division of authority in the state laws and local ordinances that it could return no indictment against any official; it recommended, however, important changes in the law. About the same time the commissioner of accounts exposed systematic corruption among the building inspectors and in the bureau of combustibles in the fire department. The charter revision committee appointed by the legislature reported a bill embodying its recommendations in February. Early in April Mayor Gaynor laid recommendations for charter revision before the legislature. They provided, among other things, for a small paid board of education appointed by the mayor, the combination of the various bureaus of buildings under a single commissioner, the transfer of important powers from the comptroller to the city chamberlain and the bestowal of authority upon the fire commissioner to direct the installation of fire appliances. Following charges by Magistrate Corrigan that crime was greatly increasing in the city and that the mayor was responsible for the demoralization of the police force, investigation was begun by a special grand jury in April. It adjourned at the close of the month without making any statement. Two April grand juries, however, handed down presentments taking opposite views of the matter. On May 1 City Chamberlain Hyde was indicted by the grand jury on the charge of having accepted a bribe of $13,800 from the Carnegie Trust Company.—Investigations in February by the Voters' League disclosed serious corruption among the city school directors.—Abraham Ruef, convicted boss of **San Francisco**, began a fourteen-year term in the state penitentiary in March.—As the result of the discovery of an alliance between his political ring and the criminal classes, Mayor Gill was recalled by the voters of **Seattle** on February 7 and George W. Dilling chosen to succeed him. Of the 71,000 registered voters 22,000 were women.—At a special election on April 4 to recall Mayor Fawcett of

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Tacoma, none of the candidates received a majority of the votes. A second election had to be held to decide between the two leading candidates, the mayor being one.—The Ohio Bureau of Accounting asserted in March that more than half a million dollars belonging to the city of **Toledo** had been diverted from funds or illegally expended in the years 1906 to 1909.—The **Socialists** met with severe reverses in the April elections in Milwaukee. Their candidates for circuit judge, alderman-at-large and school directors were defeated, as was an ordinance authorizing a bond issue. They were beaten also in Wichita, Kansas, and Two Rivers, Wisconsin. On the other hand they had notable success in Butte, Montana; Flint, Michigan; Manitowoc, Wisconsin; Granite City, O'Fallon and Canton, Illinois.—Among the cities to adopt the **commission form** of government recently was Spokane. Early in the present year four Illinois cities adopted it and two rejected it.

THE TRUST PROBLEM AND THE RAILROADS.—On February 23 the Interstate Commerce Commission announced its decision with regard to the proposed increase of **freight rates** (see last RECORD, p. 740). With a few minor exceptions in the case of the less prosperous railroads of the Southwest, no advance of rates was allowed to the 415 companies interested. It was announced that if the proposed new schedule was not canceled by March 10 no increases would be allowed for the next two years. The commission denied the request for a postponement until November 1 in order that the monthly reports for the intervening period might be used to support the contentions of the railroads. On December 21 the commission ordered the **Pullman Company** to fix rates upon upper berths not exceeding 80 per cent of the rates on lower berths whenever the latter rate should be $1.75 or over, and a rate of $1.25 where the lower rate should be $1.50. After an inquiry into the **coal rates** fixed by certain eastern carriers, the commission held in March that rates not open to all shippers alike were unlawful.—On January 4 the Bethlehem Steel Company and the Lehigh and Reading railroads were fined $40,000 each, in the United States district court, for **rebating**. If the maximum penalty had been imposed the steel company alone would have had to pay $3,200,000; but the jury recommended leniency, as the railroads asserted they had been unable to move cars on account of the congestion at the steel works.—On April 3, in the case of the United States against the Lehigh railroad, the Supreme Court handed down an important decision on the commodities clause of the **Hepburn Act**. The effect of the decision is that while carrier corporations may own stock in a commodities company and carry its products without violating the law, yet, when it is clear that the carrier manages the business of the commodity company and mingles the operations of the two concerns, its conduct comes within the prohibition of the law and it is liable to prosecution.—On April 26, after investigating charges of rebating against railroads and ore shippers in Ohio, a federal grand jury brought in twenty-one indictments.—On motion by the federal district attorney the govern-

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ment's suit for the dissolution of the National **Packing Company** was dismissed in December. This action was taken in order to facilitate pending criminal proceedings against the packers (see last RECORD, p. 740). On March 22 application for the quashing of the indictments against the packers was refused in the district court.—On March 15 the Court declared the federal corporation tax constitutional (see *supra*, p. 359).—In January proceedings were begun at Detroit for the dissolution of the so-called **bathtub trust**, some fifty indictments having been found for violation of the Sherman Act. On February 10 the court overruled the demurrer entered by defendants, who alleged that, with five exceptions, they had not been shown to have committed an unlawful act within that jurisdiction.—In December the Supreme Court refused to review the decision of the district court in New York imposing a fine of $20,000 upon the **Standard Oil Company** for the acceptance of concessions in the transportation of petroleum. At the same time the Mississippi supreme court held that the company was liable to the state privilege tax.—Following the action of the United States circuit court in declaring it an illegal combination in restraint of trade, the Temple **Iron Company**, in which seven of the big anthracite roads were interested, decided at the close of December to separate its coal and iron interests and to manage each separately.—The federal government entered suit at New York on November 28 for the dissolution of the **sugar trust**, the American Sugar Refining Company, thirty subsidiary companies and thirty-nine individuals being named as parties.—Suit was entered at New York on January 4 for the dissolution of the Atlantic steamship pool and at Cleveland on March 3 for the dissolution of the electrical trust.—In November the new Railway Securities Commission held its first meetings in Washington.—Reargument of the government suits against the tobacco trust and the Standard Oil Company were heard by the Supreme Court in January. At the close of this RECORD decision had not yet been rendered.

LABOR AND CAPITAL.—Numerous **dynamiting outrages** in the past two years, culminating in the loss of 21 lives by the destruction of the Los Angeles *Times* building in October, 1910, appeared to be traced to labor organizations when James B. McNamara, Ortie McManigle and J. J. McNamara, secretary of the International Association of Bridge and Structural Iron Workers, were arrested in April and brought to Los Angeles. Though under indictment for the *Times* explosion alone, these men were suspected of complicity in many similar offences, and it was reported that McManigle made a full confession on April 27, admitting complicity in fifteen dynamitings. J. J. McNamara, however, asserted his innocence and ascribed his arrest to a capitalist plot and to manufactured evidence. Throughout the country labor organizations expressed a readiness to provide money for the defence of the accused men.—Early in December a settlement was reached in the strike of **express company** employees in New York (see last RECORD, p. 741), the men returning to work with an eleven-hour day and substantially the rate of pay which they had demanded. The strike was

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resumed in March by some of the men, on the ground that the agreement had been violated, but ended unsuccessfully in two weeks.—The strike of **taxicab drivers** in New York (see last RECORD, p. 743) was terminated on December 5 without the establishment of the closed shop which the men had demanded. A strike of drivers in Boston was settled on February 24 by concessions on both sides.—On December 21, after a month of negotiation, **trainmen and conductors** on fifty railroads operating west of Chicago received a flat ten-per-cent increase of wages. This affected 75,000 men. —White firemen on the Cincinnati, New Orleans and Texas Pacific struck on March 9 when the company refused to discharge all negro firemen. The men refused mediation under the Erdman Act. A similar strike occurred on the Cincinnati Southern railway. It was reported that the strikers had killed more than twenty men.—The **garment-makers** in Chicago (see last RECORD, p. 743) won a partial victory on January 14 when 12,000 resumed work on a basis of arbitration. About 15,000 others returned to work gradually as agreements were made with the smaller firms. The Chicago school teachers contributed $700 towards the support of the strikers.—Disorder marked the strike of cotton operatives at Norwich, Connecticut, in the latter part of April.—On January 30 the United **Mine Workers** adopted an amendment to their constitution providing that no general strike should be ordered by the international board without a referendum to the members of the organization.—A strong force of militia was sent to Benld, Illinois, in March, on account of disorders in connection with the strike of foreign coal miners. On March 18 nearly 5000 miners in eastern Ohio went out in sympathy with the strike in the Tuscarawas district, which began in April, 1910.—On May 1 nine thousand machinists in New York City and Hudson county, New Jersey, struck for an eight-hour day.—In Los Angeles 500 carpenters went out on May 1, demanding a daily wage of four dollars. In Auburn, New York, on the same day, the carpenters received an increase of wages and decided not to strike.—In April the United States circuit court of appeals reversed the judgment of the circuit court awarding over $200,000 damages in the famous **Danbury hatters case** (see RECORD of June, 1910, p. 375). It was held that the lower court erred in directing the verdict.—Late in January the United States circuit court in New Jersey held that the federal Employers' **Liability Act** of 1908 was not unconstitutional as violating the fifth amendment or as regulating the relations between an interstate railroad and its interstate employees. In March the New York state law providing compensation to workmen injured in certain specified dangerous employments, even though such injury occurred solely through the negligence of the workman, was declared unconstitutional by the New York court of appeals.—Justice Blackmar of the New York supreme court condemned the **secondary boycott** on January 6 by making permanent an injunction restraining certain unions from interfering with the business of a Brooklyn firm manufacturing doors and window sashes.

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LYNCHING AND THE RACE PROBLEM.—A Baltimore ordinance for the **segregation** of the races was tested in January by prosecutions for its violation and was declared by the state court to be invalid. On April 6 the Baltimore councils adopted another and more drastic measure, so framed as to affect both races equally and to meet other legal objections. City blocks in which both races are living are to remain mixed until they become wholly white or wholly negro; then the other race will be excluded. Not only are negroes forbidden to move into blocks where the residents are entirely white, but they are not allowed to have churches or places of amusement in such blocks.—On April 3 President Taft decided, owing to complaints of riotous conduct, to remove the ninth cavalry, a **negro regiment**, from San Antonio and to distribute the companies on the Mexican boundary for patrol duty. Protests were received from Brownsville and other places selected by the president. It was ascertained, moreover, that the stories of the misconduct of the men in San Antonio were mostly false and that their removal was opposed by prominent citizens. It appeared that in three weeks only one out of one thousand men had been arrested. Accordingly the decision was reconsidered.—Among the presidential nominations to **federal offices** which failed of confirmation in the Senate during the last session of the sixty-first Congress were those of two negroes, one to be assistant district-attorney in Boston, the other registrar of the treasury in Tennessee.—In April, 269 women **students** at Cornell University signed a petition that two colored girls be excluded from Sage College. President Schurman replied that at Cornell "all university doors must remain open to all students, irrespective of race or color or creed or social standing or pecuniary condition." In January an agitation was begun in Flushing, New York, for the repeal of the law abolishing separate schools, the reason being that white girls were compelled to dance with negro boys in a physical-culture class.—In the case of Alonzo Bailey, a negro of Montgomery, Alabama, who was convicted of failure to complete a labor contract, the United States Supreme Court held on January 3 that the law under which he had been convicted and reduced to **involuntary servitude** was unconstitutional (see *supra*, p. 358).—**Lynching** cases occurred in several states—While being conveyed to jail at Enfaula, **Alabama**, in February, a negro who had accosted a white woman was seized by a mob and shot. The governor undertook to investigate the case and threatened to remove the sheriff.—As the result of an attack upon the members of a minstrel troupe on the streets of Benton, **Arkansas**, one negro was killed and several were injured. The mayor denounced the crime in a public circular and called upon the citizens to aid in discovering the guilty persons.—Three negroes charged with the murder of white men were taken from the jail at Warrenton, **Georgia**, in February and shot by a mob. In April, a Columbus sheriff, who shot two of the mob while defending a negro prisoner, was himself seriously wounded. Several lynchings occurred in different parts of the state in April; the three victims in one case appear to have been guilty of

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no crimes.—Threatened by a mob of twenty persons, the jailer of Shelbyville, **Kentucky**, surrendered his keys and allowed three negroes to be carried off and lynched on January 15. Two of the victims were accused of insulting white women, the other with murdering a negress. At Calhoun, in April, a negro who had mortally wounded a white man was taken from the marshal and his deputies and shot on the stage of a theater by a mob of fifty persons.—Late in January a trusted negro assaulted an eight-year-old white girl who had been left under his charge and, taking refuge in the woods near St. Tammany, **Louisiana**, was caught by the mob and lynched. —When a body of citizens raided a gambling joint at Gunniston, **Mississippi**, on February 15, one negro was killed and another wounded. For some time afterwards there was danger of a general race riot.—A negro charged with attempted assault upon a white woman at Weston, **West Virginia**, was saved from mob violence in December by being locked in a safe until the arrival of militia. When brought to trial in February he was protected by two companies of militia.—On February 6 a **Chicago** mob attacked negroes who had refused to vacate a house in a white district of the city. Fifteen negroes were severely injured and much property destroyed.—In April a negro who refused to pay his fare on a trolley car in White Plains, **New York**, and, when threatened with ejection, cut the conductor's throat, was saved from lynching by the determined behavior of a policeman.

THE DEPENDENCIES.—After a visit of five weeks to the **Philippines** the secretary of War submitted a special report to the president on November 23. The secretary declared that, although aspirations for independence found general expression in the islands, the conservative and more substantial men would view its achievement with consternation, and that the people as a whole were utterly unprepared for self-government. He stated, further, that the finances were very satisfactory, there being a surplus of over six millions; that peace and order prevailed, the robber bands having been almost entirely suppressed; and that practically all the lepers, numbering about 3000, had been segregated on one island. He recommended the establishment of a pension fund for superannuated employees of the government; an increase of $5,000,000 in the appropriations for public improvements; and more liberal laws concerning mineral claims, prospecting, and the sale of land. According to the annual report of the Bureau of Insular Affairs, issued late in December, free trade with the United States has led to a great expansion of commerce, the imports to the islands having increased by $9,275,233 and the exports by $8,870,606. It was recommended that the limit for the bonded debt be raised from five to ten millions and that the rate of interest in the postal savings banks should be increased to three per cent. As far as consistent with efficiency vacancies in the civil service are now being filled with Filipinos. Exclusive of the non-educational examinations for skilled laborers, the number of Filipinos taking civil service examinations increased twenty-four per cent

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in the year. In December great resentment was caused in the Japanese colony at Manila by the searching of several houses for explosives. President Taft, speaking in January before the Society of the Carabao (composed of army and navy officers who have served in the Philippines), expressed his belief that the agitation for immediate independence was made for political ends and did not represent the real desire of the people. The United States could not part with the islands, he said, until "they have a government with the full idea of the responsibilities attending such government." In December a parcels-post system was established between the Philippines and Hong Kong. A resolution of the Philippine Assembly, adopted in December and laid before Congress, protested against the sale of large tracts of "friars' lands" to corporations. The protest was suggested by the sale of 56,000 acres to persons alleged to be connected with the sugar trust. After the matter had been brought to the attention of the House of Representatives by Mr. Martin of Colorado, the Committee on Insular Affairs exonerated all the officers of the Philippine government of any impropriety either in selling or leasing lands. In January the eruption of the Taal volcano, thirty-four miles south of Manila, caused the death of nearly a thousand Filipinos, destroyed the crops for twenty miles around and left 5000 families destitute. Theodore Kalaw and Martin Ocampo, sentenced to fine and imprisonment for criminally libeling Commissioner Worcester, were granted in January a stay of four months with leave to appeal to the Supreme Court of the United States for a writ of error. In January the Assembly passed a bill abolishing the death penalty.—Late in February the native members of the **Porto Rico** Executive Council protested at Washington against the removal of restrictions upon the amount of land which a corporation might own, arguing that the limit should not exceed 5000 acres. It was alleged that the proposed extension of the limit was in the interest of the sugar trust. Elections on November 10 resulted in an overwhelming victory of the Unionists over the Republicans. The former party elected every member of the House of Delegates. Dr. Rivera was chosen resident commissioner at Washington. In April a strike of cigarmakers in the Caguas and San Lorenzo district near San Juan cut off about one-fifth of the cigar exportation to the United States. Twenty-two members of an alleged anarchist organization were arrested for supposed complicity in the assassination of a factory foreman and one other man. The strikers refused to make any terms until the arrested men should be set at liberty.

III. LATIN AMERICA

MEXICO.—General Diaz was inaugurated as president on December 1 for an eighth term of six years. Opposition to his autocratic rule had been developing for some time (see last RECORD, p. 745) and now found expression in the establishment of an insurrectionary provisional government under the presidency of Señor Francisco Madero in the state of Chihuahua.

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The insurgents demanded the retirement of Diaz, the guarantee of honest elections and new land laws. In January they cut the railways along the American border and carried on a series of skirmishes and attacks on the smaller towns. By March 1, they claimed to have 10,000 men in the field; the revolt was spreading in the neighboring states of Sonora, Coahuila and Durango; and the federal troops began to encounter opposition even in Yucatan and in Lower California. President Diaz at first professed to treat the insurrection lightly, but early in March he removed Señor Terrazas, who was particularly obnoxious to the people on account of his aristocratic leanings, from the governorship of Chihuahua. In order further to conciliate the opposition, the president accepted late in March the resignation of his cabinet, including Vice-President Corral and Señor Creel, the foreign minister. Señor Limantour, who had just returned from financial missions to Europe and the United States, undertook the reconstitution of the cabinet. Meanwhile serious fighting had occurred at Casas Grandes and near Agua Prieta, and on March 11 the constitutional guarantees were suspended. On the reassembling of Congress on April 1, President Diaz announced that he favored a constitutional amendment making high officials ineligible for reëlection, and he promised measures safeguarding the suffrage of qualified citizens, reforming the judiciary and securing a division of large estates. General Madero declared that the resignation of Diaz must precede peace, and threatened to attack Ciudad Juarez. The fear of American intervention, however (see *supra*, p. 349), paved the way for negotiations between the government and the insurgents; and on April 23 an agreement was signed for a five days' armistice covering the zone between Juarez and the city of Chihuahua in order to arrange terms of peace. It was announced that President Diaz had recalled General Reyes to the country.

OTHER STATES.—An incipient revolt in **Haiti** was crushed and the leaders were executed in February.—A long-threatened insurrection against President Davila of **Honduras** broke out in December under the leadership of former President Bonilla. By the terms of an armistice arranged on February 8 through the good offices of the United States, the rivals agreed to withdraw and abide by a fair election. On March 4, Congress selected Francisco Beltran as provisional president to serve until a regular successor to Davila could be elected.—General Juan Estrada was elected president of **Nicaragua** on December 31 by unanimous vote of Congress.—On March 2 Manuel E. Aranjo was inaugurated as president of **Salvador.**—The **Costa Rican** Congress approved in February the government's plan to refund the foreign debt of ten million dollars.—Early in January, General Emilio Estrada was elected president of **Ecuador** to succeed General Alfaro.—The crews of the **Brazilian** battleships in the harbor of Rio Janeiro mutinied on November 23 and demanded from Congress an increase in pay and the abolition of corporal punishment. The government yielded two days later and granted a general amnesty. Further mutiny among marines quartered

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in a fort in the harbor was quelled on December 10 only after an artillery engagement lasting all day; two hundred of the mutineers were killed or wounded.—The **Bolivian** ministry resigned on December 16 as a protest against the resumption of diplomatic relations with Argentina (see *supra*, p. 350).—Dr. Ramon Barros Luco, the newly elected president of **Chile**, was inaugurated on December 23.—The **Paraguayan** Congress accepted the resignation of President Gondra on January 19 and elected Colonel Jara to succeed him.—Señor José Battle y Ordonez was elected president of **Uruguay** on March 1.

IV. THE BRITISH EMPIRE

THE UNITED KINGDOM.—Mr. Asquith had to confess to Parliament on its reassembling on November 15 the final failure of the conference between the Liberal and Conservative leaders on the constitutional question (see last RECORD, p. 747). It was obvious that with the two Houses deadlocked, nothing further could then be accomplished toward the restriction of the Lords' veto. The premier, therefore, opened the new campaign at the National Liberal Club on November 19, and nine days later Parliament was formally dissolved. The campaign was not as lively as usual, and the constitutional question of the veto was complicated by considerations of its practical bearing on the questions of Irish home rule, social legislation and tariff reform. The general **elections**, which ended on December 19, returned a coalition majority of 126, an increase of two.—The **new Parliament** was formally opened by King George on February 6. On the 21st the Veto Bill was brought in and passed first reading by 351 votes to 227. Second reading was passed on March 2 and the government was kept busy during April killing the numerous amendments offered by the opposition. (For the provisions of the Veto Bill, see the RECORD of June 1910, p. 380.)—Premier Asquith stated in the preliminary **Home Rule** debate in the House of Commons on February 14 that the government's first task after the Veto Bill had been disposed of would be to carry out a policy of full self-government for Ireland. Augustine Birrell, chief secretary for Ireland, told an audience at Oxford in March that the government's bill would follow in outline Gladstone's second Home Rule measure.—It was announced early in February that the ministry planned to present a measure for compulsory insurance against **unemployment**, by which the men should pay about sixpence a week and the employers and the state half of that amount each. Another step taken by the government affecting labor was the creation of a new body for the reclaiming of discharged prisoners, to be presided over by the Home secretary and to coördinate the efforts of all philanthropic societies engaged in assisting ex-convicts to gain a livelihood.—The **army** estimates for 1911–1912 issued by War Secretary Haldane showed a total of $138,450,000, including an item of $425,000 for new aircraft.—The **naval** estimates for the year carried a total of $221,000,000, an increase of $19,000,000. Provision was

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made for five new dreadnoughts, three protected cruisers, one unarmored cruiser, twenty destroyers, six submarines, and an increase of 3000 in the enlisted personnel.—Plans were announced in January for expending $75,000,000 for the improvement of the port of **London**, including dredging, building of drydocks and bettering of rail accommodations.—Preparations were well advanced in April for the coronation of King George, which was to take place on June 16, and for the holding of a Colonial Conference prior to that event.

CANADA.—The appointment of the duke of Connaught, the king's uncle, as **governor-general** in succession to Earl Grey was gazetted in January. It was announced that he would assume the government in September.—The subject of the greatest importance to the Dominion was that of **reciprocity** with the United States. The treaty, negotiated by the Laurier ministry (see *supra*, p. 349), encountered the opposition of the Conservative party and of the agricultural and mining interests of the West, especially British Columbia; it was debated in Parliament during March and April.—Mr. Fielding delivered his **budget** speech in the House on April 4. Revenue was estimated at $115,000,000, with a probable surplus of $30,000,000.—In January, the Federal Railway Commission rendered a sweeping judgment affecting all the **express companies** doing business in the Dominion, declaring them to be overcapitalized and ordering them to submit new tariffs within three months.—In consequence of the refusal of the Australian Commonwealth to permit the proposed Trans-Pacific mail service between Canada and Australia to be carried on by way of New Zealand, save under unacceptable conditions, the Canadian government entered into an agreement in January with the Union Steamship Company for a monthly service between Canada and New Zealand.

AUSTRALIA.—On January 1, the **Commonwealth** secured increased prestige by (1) the formal acquisition of its own capital site and territory of Yass-Canberra; (2) the attainment of direct control over the Northern Territory; (3) financial independence, owing to the expiration of the Bradden clause of the constitution which had restricted the federal revenue for the first ten years; and (4) the actual beginning of compulsory military training. It was announced that Lord Dudley would be succeeded in the governorship in July by Lord Denman. The Labor ministry of Mr. Fisher declared its intention not to harbor foreign trusts and to apply the anti-trust laws with all severity.—The opening-up of crown and other lands for settlement continued in **New South Wales.**—Owing to the shortage in the supply of labor, the old Immigration Act was revived in **South Australia** in March, so that assistance might be given to immigrants. The state government decided also to undertake to irrigate some fifteen thousand acres from the Murray River around Lake Barners.—In **Queensland**, Mr. Kidston, the premier, retired from public life. The ministry was reconstructed under the premiership of Mr. Denham.—Violent scenes occurred in the Parliament of **Western Australia** in January as the result of the obstructive

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tactics employed by the Laborites to prevent the passage of the bill for the redistribution of seats.

NEW ZEALAND.—Sir Joseph Ward, the prime minister, stated in January that the Dominion had completely recovered from the temporary financial depression of the year 1908.

SOUTH AFRICA.—The first **Parliament** of the South African Union was opened on November 4 amid general enthusiasm by the duke of Connaught as the personal representative of King George V. Mr. Molento was elected speaker of the House, and Mr. Reitz president of the Senate, in accordance with the ministerial caucus. One of the first measures passed was a bill embodying a ten-per-cent tax on the profits of the Cape and Orange Free State mines. The budget carried estimated expenditures of about $80,000,000.—General Smuts, minister of the Interior, declared in January that as South Africa had now become a nation it must take upon itself national obligations. He used the old maxim that the best way of preserving peace was to be ready for war. Lord Methuen in March advised the formation of a regular **army** and general military training.—The action of the Indian Legislative Council in putting a stop to Indian immigration to Natal immediately affected the **labor** market; the wages of the natives were doubled and those of the Indians on the sugar estates were raised fifty per cent.—The Provincial Assembly of Cape Colony adopted by 16 votes to 15 a motion requesting the Union Parliament to exclude all further **immigration** of Asiatics into the Union.—Mayor Selburne introduced a measure in the Union Assembly in March for the segregation of **natives** in reserves, which would be administered by native councils.—An amendment to the Miners' Bill, providing for an eight-hour day, was negatived by 27 votes to 2.—The earnings of South African **railways** for six months exceeded by $5,000,000 the figures for the corresponding period of the preceding year.

INDIA.—The **financial statement** of the government was presented in the viceroy's Legislative Council on March 1. The revenue was estimated at close to $400,000,000 with a surplus of $15,000,000.—A measure was enacted to prohibit after July 1 the **emigration** of indentured Indians to Natal, owing to the friction between the Indians and the British colonists and to the lack of any guarantee that Indians would be treated as permanent citizens at the close of their terms of indenture.—A Factory Bill, limiting adults to twelve hours' and children to six hours' daily labor, was passed into law on March 21.—Unrest and **disorder** seemed to be as prevalent as ever throughout the Empire. Serious rioting marked the Mohurrum celebration at Bombay in January.—During the month of February the deaths from plague in the country reached the enormous total of 68,498. The government reported that the most persistent efforts to stamp out the epidemic failed to effect a permanent improvement in the situation.—The returns from the new census gave the **population** of India as 315,000,000, this being an increase of 20,500,000 over the census of 1901.

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V. CONTINENTAL EUROPE

FRANCE.—Parliament reopened on January 10, and M. Brisson was reëlected president of the Chamber of Deputies. The premier, M. Aristide Briand, was repeatedly attacked, on the one hand by the reactionary Right, because of the church troubles, and on the other by the extreme Left, because of the vigor which he had displayed in putting an end to the railway strikes (see last RECORD, p. 752). On February 24, the Radical Socialist Republicans, under the leadership of M. Malvy, accused the ministry of not rigorously enforcing the church laws of 1901 and 1904; and the government majority of sixteen on the subsequent vote of confidence seemed so slight that on the 27th M. Briand tendered his resignation and that of the cabinet to President Fallières. The next day the president asked M. Monis, the vice-president of the Senate, to form a **new ministry**. The invitation was accepted by M. Monis, who took for himself the portfolio of the Interior and selected as his colleagues, all from the Radical *bloc*, M. Cruppi, Foreign Affairs; M. Delcassé, Marine; M. Berteaux, War; M. Charles Dumont, Public Works; M. Perrier, Justice; M. Boncour, Labor; and M. Pams, Agriculture. The presence in the cabinet of M. Malvy as under-secretary of Justice and Worship was regarded as an indication of the drastic application of the Religious Congregation Laws of 1901 and 1904 and the abandonment of M. Briand's policy of moderation and conciliation. The minister of Labor declared himself an ardent advocate of obligatory "syndicalism."—M. Monis read his **declaration of policy** before the Chamber on March 6. The Income-Tax law was to be the first thing to occupy the attention of the government. Then the subject of electoral reform with a view to proportional representation would be taken up. In the interest of social peace, the railway employees of the state who were dismissed would be taken back, except those who had been guilty of gross insubordination and destruction of property. The railways not under state supervision would be requested to do the same. A vote of confidence in the ministry was then carried, 309 to 134.—The immediate construction of two 23,500-ton dreadnoughts was ordered in February by a vote of 461 to 67. M. Delcassé presented in March the following **naval** program: the fleet to consist of 28 battleships, 10 scouts, 52 destroyers and 94 submarines, at an estimated outlay of $250,000,000, extending over ten years.—Serious disturbances occurred in March and April among the **wine-growers** in the Aube district, on account of the refusal of the government to take immediate steps to include that department in the delimited "champagne area." The Chamber on April 3 by 323 votes to 228 referred to a special commission several amendments to the Adulteration Law of 1905 and the Wine Delimitation Law of 1908. The Senate asked the Council of State for a thorough investigation. Counter demonstrations against the Aubois were held in April in the valley of the Marne; large quantities of wine were wilfully destroyed, and the military arm was invoked to restore order.—A committee of the Chamber reported on December 6 in favor of limited **woman suf-**

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frage.—Some forty Progressists, together with a few seceders from the Democratic Left of the Chamber, formed in March a new **Liberal group**, styled the Republican Union, under the leadership of M. Leblond, the mayor of Rouen.—In accordance with a bill which finally passed the Senate on February 10, Greenwich time became the legal time in France on March 10 at midnight. The republic was thereby brought within the same time as England, Belgium, Holland and Spain.—M. Jonnart, governor-general of **Algeria** for nine years, and one of the best colonial administrators of France, resigned in March because of his political sympathies with the retiring premier, M. Briand, and was succeeded by M. Lutaud, former mayor of Lyons.

GERMANY.—Several important measures have been debated in the **Reichstag.** The discussion of the proposed constitution for **Alsace-Lorraine** occupied public attention for three months. The bill, as originally presented by the government and passed by the Bundesrath, gave the territory autonomy, but excluded it from representation in the Bundesrath and left it under the supreme control of the emperor. The Reichstag committee in charge of the bill, on motion of the Center party, adopted an amendment, making the territory an independent federal state of the Empire, to be represented in the Bundesrath by three votes and to have as executive a regent holding office for life and nominated by the emperor on the proposal of the Bundesrath. This amendment was supported by the Center, the Socialists, some of the National Liberals and the non-Prussian elements generally, all of whom opposed the Prussianization of the Reichsland. After protracted discussions, a compromise seemed to have been reached in April, by which the state would have its three votes in the Bundesrath but could not vote on amendments to the Constitution nor be counted in a division of the Bundesrath, should such division give Prussia a majority not otherwise obtainable.—The bill taxing the unearned increment passed the Reichstag by a vote of 199 to 93, against the protests of the Liberals and Socialists, who, though approving its principle, objected to applying the revenue to military purposes. Cities and local municipalities were to retain 40 per cent of the proceeds of the tax, and the sovereigns as well as extensive agricultural lands were to be exempt.—The debate in the Reichstag on the five-year Military Bill was marked by repeated demands from Socialist and Center deputies for disarmament, and no less insistent determination on the part of the majority to increase the strength of the army.—The Reichstag passed a bill establishing labor exchanges, composed equally of employers and employees and empowered to settle labor disputes.—Paul Singer, the leader of the Socialist party in the Reichstag, died on January 31 at the age of 67. His funeral was the greatest demonstration ever seen in Berlin in honor of a private citizen. The leadership of the party devolved upon Hermann Molken Nehr, a cigar-maker from Saxony.—The public prosecutor caused proceedings to be taken in March before a court of honor against Dr. Liebknecht, the well-known Socialist

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deputy, for an attack upon the Prussian and Hessian authorities on account of the tsar's visit to the country.—The population of the Empire increased between 1905 and 1910 from 60,641,489 to 64,896,881. Of the latter total, 40,156,791 were Prussian.—The new session of the **Prussian** Diet opened on January 10. Von Bethmann-Hollweg, the president of the ministry, did not mention the Franchise Bill (see last RECORD, p. 754), which had been proposed to alter the three-class system, but emphasized the necessity of economy in appropriations. Some opposition was evidenced in the Diet in March to the papal decree compelling Catholic teachers to take the anti-Modernist oath.—The ninetieth birthday of Prince Regent Luitpold of **Bavaria** was celebrated throughout the country on March 12. There was a police round-up of anarchists in Munich in January, and twenty-three were arrested.—A rising of the natives on Ponape Island in the **Carolines** was suppressed by German warships in January. Fifteen natives were shot and 426 banished.—Unrest among the Hottentots in German **Southwest Africa** was reported again in March.

AUSTRIA-HUNGARY.—A scheme for the complete reorganization of the Austro-Hungarian **military** and **naval** forces was published simultaneously in Vienna and Budapest on January 10. The budgets which had been worked out in accordance with that scheme were presented to the joint Delegations by Baron Burian von Rajecz on February 28 and passed. Provision was thereby made for four dreadnoughts of 20,000-tons each, three cruisers, twelve torpedo boats and six submarines at a total cost of $62,000,000; an annual increase for the army of $8,600,000; and a liberal extension of the consular service. It was stated that by 1915 the fleet of the dual monarchy would comprise 13 battleships, 9 cruisers, 18 destroyers, 48 torpedo boats, 12 submarines, and an additional Danubian squadron of nine ships. The *Neue Freie Presse* and other influential newspapers bitterly assailed the increasing burdens of militarism; and the Social Democrats held monster hostile demonstrations at Vienna.—The reconstituted **Austrian** cabinet of Von Bienerth having succeeded in breaking up the temporary coalition in the Reichsrath between the Poles and Czechs, which threatened its position in December, won a triumph in March in passing the bill creating an Italian faculty of laws in connection with the University of Vienna. The population of Austria was stated to be 28,567,898, an increase of about 2,500,000 in ten years.—No little resentment was shown in **Hungary** because Bosnia and Herzegovina were not annexed to that kingdom. It seemed probable that the government would renew its demands for a separate Hungarian military organization on account of the additional burdens imposed by the Delegations. Official census returns showed the population of Hungary to be 20,850,700, an increase in ten years of over 1,500,000.

ITALY.—The observance of the jubilee of the kingdom absorbed general attention. The king inaugurated a national exhibition at Rome on March 27, and celebrations were held throughout the peninsula.—A **cabinet crisis** came near marring the festivities. Parliament had been debat-

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ing throughout February a bill extending the franchise and at the same time providing for compulsory voting; and Signor Luzzatti, encountering opposition from both Conservatives and Radicals, finally recommended that further consideration of the measure should be postponed until 1913. This suggestion was decisively negatived by a vote of 265 to 75. Signor Luzzatti thereupon resigned on March 18, and was succeeded by the Radical ex-premier, Signor Giolitti, who retained seven members of the old cabinet. —King Victor Emmanuel caused general astonishment on March 23 by inviting Deputy Bissolati, the Socialist leader, to visit him and discuss politics. Signor Bissolati subsequently declined to accept the portfolio of Agriculture.—Foreign interest was aroused in the trial begun at Viterbo in March of thirty-six alleged members of the Camorra, an organization of professional criminals, which was supposed to have ramifications throughout southern Italy and even in the United States.—The **pope** proclaimed in January that the year would be one of mourning at the Vatican to commemorate the loss of the temporal power. The Holy See decided not to hold any solemn functions and to postpone further the already long delayed consistory.

RUSSIA.—An acute constitutional and **cabinet crisis** arose in March. On the 17th, the Council of the Empire rejected M. Stolypin's Zemstvo Bill, conferring restricted self-government on the nine western provinces, only twenty-five Conservatives in the Council voting for the measure. Three days later the premier resigned. The tsar, unable to prevail upon M. Kokovosoff, the minister of Finance, to form a new ministry, was obliged, after some hesitation, to recall M. Stolypin on the latter's own terms. These involved the prorogation of the Council and the Duma for three days, the proclamation of the Zemstvo measure by imperial **ukase** in accordance with the emergency clause in the Constitution, and the suspension of M. Trepoff and M. Durnovo, the leaders of the opponents of M. Stolypin's policy, from all sittings of the Council of the Empire until January, 1912. The Council replied to these acts by adopting an interpellation against the premier by 98 votes to 52.—A vast program was submitted to the Duma in April for the expenditure of nearly $100,000,000 on the construction of a series of waterways connecting the Caspian Sea with the Arctic Ocean.—In February, Governor Mahlakoff began a widespread expulsion of **Jews** from the province of Tchernigoff. In March the ministry extended to private schools and trade institutions the former regulations under which Jewish children might attend the public schools only at a ratio of three per cent of the total attendance in cities, five per cent in the smaller towns, and ten per cent in various Jewish settlements.—Radical agitation and disorder in the **universities** in December led the minister of education, M. Kasso, to state in March his determination to make both professors and students confine themselves strictly to their scientific and classical studies.—The death of Count Tolstoy on November 20 was followed by mourning throughout the empire; the Duma adjourned for a

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week as a mark of respect.—The anniversary of the emancipation of the serfs by Alexander II was solemnly observed by the tsar on March 4.—The determination of **Finland** to prevent Russification seemed as definite as ever (see last RECORD, p. 755). During November, four provincial governors resigned because of the constitutional conflict. Baron von Troil, governor of the Viborg district, was summarily dismissed, and his departure was made the occasion for a great demonstration in his honor, the crowds bearing torches, singing patriotic songs and cheering the fatherland.

SPAIN.—The premier, Señor Canalejas, announced in January an ambitious legislative program favored by his **ministry**, including the Associations Bill, compulsory military service, educational reform, restriction of emigration, irrigation, the construction of 20,000 miles of railway and the colonization of arid regions in Aragon and Catalonia. The **Cortes** met on March 6, and on the 27th began a debate on the Ferrer trial (see RECORD of December, 1909, p. 757). On April 1, owing to dissatisfaction expressed by the military authorities with the premier's defence of the military judges, the ministry tendered its resignation. King Alfonso, who was at Seville, hastened back to Madrid and induced Señor Canalejas to retain his post, while authorizing the reconstruction of his cabinet. The Ferrer debate ended on April 8 with a government triumph of 179 votes to 23. The Cortes was then prorogued until May 8 when the Associations Bill was to be be presented. Parliament had already in November enacted the "Padlock" Bill, forbidding any increase in the religious orders for a period of two years or until the concordat of 1851 should be revised. The Clericals were preparing for a bitter fight against the Canalejas government.—A republican assembly at Madrid in January declined to coöperate with the Catalanists.

PORTUGAL.—The significant factor in the republic's political situation is the approaching **elections**, which, after four postponements, have been set for May 14. The returns will give a hint how six months of the "new régime" have reacted upon the Portuguese people.—The **provisional government** legislated during the winter on several important matters. A series of decrees separated church and state, forbade duelling and legalized divorce, practically upon the mutual consent of the contracting parties. A new Electoral Law, issued in February, extended the suffrage to all males over twenty-one who could read and write or who were fathers of families, except soldiers, ex-convicts, bankrupts and paupers, though the restriction might later be extended to include judges, clergy and members of firms having government contracts. The government declared its intention of pensioning the ex-king.—A good deal of unrest throughout the country was attributable to two important **opposition factions**. On one side, the extreme Radicals were disgruntled because so little seemed to have been accomplished toward social reforms; in March they organized a general strike at Lisbon, which, however, proved a failure. On the other side, the Portuguese bishops protested against the expulsion of the monks and agitated against the republic;

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the northern provinces were roused to considerable feeling by the separation of church and state. In April, Cardinal Merry del Val, the papal secretary of state, advised the bishops to accept the separation without reserve.

THE BALKAN STATES.—In **Turkey**, the government's attention was divided between financial difficulties and local insurrections. Djavid Bey, the head of the budget commission, urged on Parliament the necessity for the utmost economy and called attention to the estimated deficit of $40,000,000 of dollars which would have to be covered by foreign loans. Governmental expenditures were increased by a military campaign which was carried on in January and February against the Yemen Arabs. This uprising was suppressed in March; but a serious insurrection of Albanians, who opposed the policies of the Young Turk party, had not been entirely put down at the end of April.—The **Bulgarian** cabinet of M. Malinoff had trouble with the king because of its radicalism in demanding electoral reform; and in March a new coalition cabinet of Nationalists and Progressists was formed with M. Ivan Gueshoff as premier and minister of Foreign Affairs.—Prime Minister Venezelos of **Greece** outlined his policies in December. He dwelt especially upon drainage and other improvements of the arable lands of the country; encouragement of private initiative in industry; reform of iustice and public instruction; and reorganization of the army and navy under one ministry of national defence with the aid of foreign instructors. On the Cretan question he maintained complete silence.

OTHER EUROPEAN STATES.—A bill passed the **Norwegian** Storthing in April, admitting women to all state offices, except those having to do with the cabinet, the military, diplomatic and consular services and the church. The first woman member of the Storthing took her seat on February 3.—King Gustav opened the **Swedish** Riksdag on January 17. He congratulated the nation upon the improved economic condition and gave the estimates for 1912 as about $69,390,000.—A serious coal-miners' strike occurred in January near Liège, **Belgium**. An unfortunate and probably uncalled-for interference by *gendarmes* reflected upon the government, which won a very close victory in the Chamber, by a vote of 62 to 58 with three abstentions.—The fortification of Flushing was the measure most discussed in the **Netherlands** during March and April.—The **Swiss** census returns for 1910 showed a population of 3,836,000, an increase of nearly half a million in ten years. Of the nationalities, the largest relative increase was among the Italians. The number of representatives in the lower House was increased from 167 to 187. St. Gall accepted proportional representation on a close referendum, being the ninth canton to take such action. Zurich, by a vote on referendum of 31,054 to 22,178 admitted women to ecclesiastical and educational councils.—The new constitution which Prince Albert granted to **Monaco**, went into effect on January 7.

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VI. AFRICA AND ASIA

MOROCCO.—Several Berber tribes in March proclaimed as sultan Mulai Ismail, a descendant of Sultan Mulai Suleiman. Communication was cut between Fez and Tangier and foreign couriers were captured and robbed. The revolting tribesmen surrounded Fez, and it seemed that only the arrival of French troops (see *supra*, p. 352) would to save Sultan Mulai Hafid.

PERSIA.—Nasr-el-Mulk, who had been invited in September to return to the country and assume the regency (see last RECORD, p. 760), declared on February 16 in an address to the members of the Mejliss, that constitutional government was impossible under the prevailing groups and refused to take office unless he should receive a formal guarantee of a stable majority and of the non-interference of the Mejliss in foreign affairs. The assurances were unanimously given, and the regent took the oath of office on March 4. On the 12th a new cabinet, in sympathy with the regent, was formed under the presidency of Sepahdar Azam, all the members being chosen from the Mejliss.

JAPAN.—The **Diet** opened on January 20. On February 13 the budget for 1911–12 passed the lower House. It carried estimated receipts of and total expenditures exactly balancing at $279,000,000.—After repeated efforts, covering several years, an important Factory Law was enacted in March, dealing particularly with child labor.—The Katsura ministry formed in February a union with the Seiyukai or Unionist party founded by Marquis Ito. This seemed to foreshadow the final establishment of the system of party government in Japan, for until then the ministry did not have a clear majority in the Diet.—The trial of the twenty-six **anarchists**, whose conspiracy was discovered in September, was begun before the Supreme Court on December 10. On January 17, Dr. Kotuko, his wife and twenty-two associates were sentenced to death for having plotted against the life of the emperor and other members of the royal family. Two of the prisoners were sent to prison for eight and eleven years respectively.

CHINA.—The **National Assembly**, the first deliberative body in the history of the Empire, which began its sessions on October 3, adjourned on January 11, after a rather stormy career marked by frequent clashes with the throne and the Grand Council. While it failed to secure most of the reforms it asked, it did good work in preparing the way for the general Parliament in 1913.—The **plague** devastated northern Manchuria. By March 1, it was officially stated that 40,000 had perished, and that the daily death-rate was 200.—An **uprising** against the government and against foreigners was reported near Canton in April.

[For colonies and dependencies in Africa and Asia, see the United States, the British Empire and the continental European states, *supra*.]

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